

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No. 31785 of 2018

R.S.Suriya

... Petitioner

-VS-

1. The Principal Commissioner of Income Tax
Central 2,
Nungambakkam,
Chennai - 34.
2. The Deputy Commissioner of Income Tax
Central Circle - II(4),
New No.46, M.G.Road,
Nungambakkam,
Chennai - 34.
3. The Assistant Commissioner of Income Tax
Central Circle - II(5),
New No.46, M.G.Road,
Nungambakkam,
Chennai - 34.
4. The Assistant Commissioner of Income Tax
Central Circle - II(4),
New No.46, M.G.Road,
Nungambakkam,
Chennai - 34.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the first respondent in C.No.2747B/PCIT/C-2(4)/2017-18 dated 31.05.2018, quash the same and consequently, direct the first respondent to waive the interest for the assessment years 2007-2008 and 2008-2009.

For Petitioner : Mr.S.Raveekumar

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel for IT

ORDER

The *lis* on hand is instituted questioning the legal sustainability of the rejection order passed by the first respondent with reference to the applications submitted by the writ petitioner claiming waiver of interest under Section 220(2A) of the Income Tax Act, 1961.

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2. The petitioner has stated that he is a professional Cine Actor and regularly filing return of income with the respondents. The petitioner follows the cash system of accounting as he received payments including

advances by cash also. In the course of his profession, the petitioner received advances by cash with reference to priority in dates before finalization of the story or name or co-artists. Such advances will be treated as income and brought to books for accounting and taxation, only in the year, when the project materializes as it is common parlance in the industry that many projects would be dropped or delayed due to various reasons, including the call sheet problem. The petitioner sometimes out of movies. While so, he has been facing harassment at the hands of the respondents for quite sometime.

3. This being the professional difficulties faced by the petitioner, it is contended that search operation was conducted in the premises of the petitioner on 19.10.2010. The assessment orders were passed by the third respondent on 30.12.2011 for the assessment years 2007-2008 and 2008-2009. The appeals filed by the writ petitioner before the Commissioner of Income Tax (Appeals) was partly allowed on 27.03.2013. As against the same, appeals and counter appeals were filed by the third respondent before the Income Tax Appellate Tribunal. By

common order dated 23.08.2013, all the appeals and cross appeals were rejected confirming the orders of the CIT(A). However, the third respondent had not given effect to the orders of the Commissioner of Income Tax (Appeals) till 25.09.2013 and 27.09.2013, implying that according to the department, the assessment attains finality only after the orders passed by the Tribunal.

4. Under these circumstances, after giving effect to the orders of CIT(A), the petitioner filed Miscellaneous Petitions before the ITAT seeking relief against Double Taxation for both the years. The Miscellaneous Petitions were allowed as early as on 06.06.2014. Again, after a huge delay, the order was given effect only on 29.03.2017, after nearly three years.

5. It is contended that, in the meantime, the assessment for the year 2011-2012 was taken up and the said assessment year is not connected with the issue raised in the present Writ Petition. The petitioner filed

rectification petition stating that the interest has been levied without taking into consideration the pre-paid taxes and that the credit of pre-paid taxes was not given in full and interest under Section 234A cannot be levied as the return was filed in time. The orders were passed on the rectification application on 30.03.2017, nearly after three years, accepting the contention of the petitioner for refund of Rs.2,33,76,590/-. The petitioner states that the department contributed for the delay in disposal of the application and other actions. Therefore, the petitioner is entitled for the waiver of interest under Section 220(2A) of the Income Tax Act. The petitioner made a request to adjust the refund amount due to the petitioner with the demand if any for the other years from 2014 onwards. However, the request was not considered and the interest was unjustly allowed for the assessment years 2007-2008 and 2008-2009. The applications filed by the petitioner under Section 220(2A) of the Act was also not considered with reference to the grounds raised by the petitioner and based on some irrelevant consideration, the said application was rejected.

6. The learned counsel for the petitioner contended that, the representations submitted by the petitioner on several occasions are not considered and therefore, the impugned order is in violation of Section 220(2A) of the Income Tax Act. The petitioner furnished all the materials and relevant documents to establish that he is not responsible for the delay and he had co-operated for the completion of the assessment proceedings. This apart, the petitioner paid the tax as demanded in time by submitting the returns of income punctually and therefore, he is entitled for waiver of interest as contemplated under Section 220(2A) of the Act.

7. The learned counsel for the petitioner drawn the attention of this Court with reference to various representations submitted by the writ petitioner. The representations were submitted on 23.05.2017, 05.09.2017 and 18.09.2017 respectively seeking waiver of interest under Section 220(2) of the Income Tax Act. However, the first respondent considered the first representation dated 23.05.2017 and subsequent

representations sent by the petitioner were not considered. Thus, non-consideration of the grounds raised by the petitioner would vitiate the entire order and the matter has to be remitted back to the authority for fresh consideration of all the materials submitted by the writ petitioner.

8. The learned counsel appearing on behalf of the writ petitioner is of the opinion that, the writ on hand is the fit case for remand, in view of the fact that, the authority has not exercised jurisdiction as contemplated under the provisions of the Act. The non-consideration of the relevant materials furnished through representations deprived the petitioner from availing the benefit of waiver of interest under Section 220(2A) of the Income Tax Act.

9. The learned counsel appearing for the petitioner solicited the attention of this Court regarding the assessment orders passed with reference to the assessment years 2007-08 and 2008-09. In those two assessment orders, there is no whisper about the non-cooperation of the

petitioner for completion of the assessment proceedings. Thus, the reasons for rejection of application in the impugned order that the petitioner had not co-operated for completion of assessment is factually incorrect and it is nothing but the imagination of the first respondent when the assessment order did not speak anything about any such non-cooperation on the part of the assessee and the grounds invented for rejection of application deserves to be set aside.

10. The learned counsel for the petitioner pointed out that the details regarding the return of Income Tax paid punctually by the petitioner and the refund for which, the petitioner is entitled, were repeatedly claimed by way of representations. The petitioner has sought for adjustment of refund due to him and such a request was also not considered by the respondents.

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11. The relevant application for the purpose of grant of waiver of interest was filed at the first instance by the petitioner on 23.05.2017

through his authorized Chartered Accountants. In the said application also the petitioner made a request that Assessing Officer has to adjust the refund to the tax demand for the assessment years 2007-08 and 2008-09. It is specifically stated in the said application that the assessee has fully co-operated during the appellate proceedings and further provided all the necessary details as required by the Assessing Officer. In the second representation dated 05.09.2017 it is stated that he has furnished all the details for the purpose of considering the waiver petition initially filed on 23.05.2017. Even in the second representation, the petitioner has stated that the assessee had to refund due for some of the years and there was demand payable by the assessee for other years. Vide submission dated 04.03.2014 and 06.02.2015, the assessee made clear the position to the Assessing Officer that the total refund due to the assessee was more than the demands payable. The status of demands and refunds for respective years were also categorically furnished by the assessee in the said representation dated 05.09.2017. In the next representation dated 18.09.2017 also, the petitioner has reiterated the said factual position and requested to grant waiver of interest. However, none of the grounds

raised by the petitioner were considered and the rejection order is passed in an unilateral manner and thus, the Writ Petition has to be considered.

12. The learned counsel for the petitioner in support of his contentions relied on the judgment in the case of ***B.M.Malani vs. Commissioner of Income Tax and another*** reported in ***(2008) 10 SCC 617***. The following paragraphs are as follows:

"14. The submission of Mr.Varma is that non-enchashment of demand draft worth Rs.10 Lakhs as also non-selling of the shares and securities as prayed for by the appellant caused genuine hardship to the assessee, in support where of reliance has been placed on the New Collins Concise English Dictionary; Words and Phrases, Permanent Edn., Vol.18 and Black's Law Dictionary. It was furthermore submitted that had the shares and securities been sold when the request therefor was made, which was worth Rs.30 Lakhs at the relevant time, the tax burden of the appellant would have been reduced; particularly when after adjusting the amount of Rs.117.04 Lakhs deposited by the appellant, only a sum of Rs.40.73 Lakhs remained due.

.....

16. The term "genuine" as per the New Collins Concise English Dictionary is defined as under:

" 'Genuine' means not fake or counterfeit, real, not pretending (not bogus or merely a ruse)".

17. For interpretation of the aforementioned provision, the principle of purposive construction should be restored to. Levy of interest although is statutory in nature, inter alia, for re-compensating the Revenue from loss suffered by non-deposit of tax by the assessee within the time specified therefor. The said principle should also be applied for the purpose of determining as to whether any hardship had been caused or not. A genuine hardship would, inter alia, mean a genuine difficulty. That per se would not lead to a conclusion that a person having large assets would never be in difficulty as he can sell those assets and pay the amount of interest levied.

18. The ingredients of genuine hardship must be determined keeping in view the dictionary meaning thereof and the legal conspectus attending thereto. For the said purpose, another well-known principle, namely, a person cannot take advantage of his own wrong, may also have to be borne in mind. The said principle, it is

conceded, has not been applied by the Courts below in this case, but we may take note of a few precedents operating in the field to highlight the aforementioned proposition of law. [See Priyanka Overseas (P) Ltd. v. Union of India (SCC at pp.122-23, para 39); Union of India v. Major Genral Madan Lal Yadav (Retd) (SCC at p.142, paras 28-29); Ashok Kapil v. Sana Ullah (SCC at p.345, para 7); Sushil Kumar v. Rakesh Kumar (SCC at p.692, para 65 first sentence); Kusheshwar Prasad Singh v. State of Bihar (SCC at pp.451-52, paras 13-14 and 16)].

19. Thus, the said principle, in our opinion, should be applied even in a case of this nature. A statutory authority despite receipt of such a request could (sic not) have kept mum. It should have taken some action. It should have responded to the prayer of the appellant. However, another principle should also be borne in mind, namely, that a statutory authority must act within the four corners of the statute. Indisputably, the Commissioner has the discretion not to accede to the request of the assessee, but that discretion must be judiciously exercised. He has to arrive at a satisfaction that the three conditions laid down therein have been fulfilled before passing an order waiving

interest.

20. Compulsion to pay any unjust dues per se would cause hardship. But a question, however, would further arise as to whether the default in payment of the amount was due to circumstances beyond the control of the assessee."

13. Relying on the said findings of the Apex Court, the learned counsel appearing for the petitioner reiterated that the waiver of interest in the present case ought to have been allowed by the first respondent. The Supreme Court in clear terms held that, genuine hardship would, *inter alia*, mean a genuine difficulty. Thus mere possession of assets larger in nature would never be a ground to reject the ground of difficulty raised by the assessee in respect of other instances. It is further considered that compulsion to pay any unjust dues *per se* would cause hardship to the assessee. In the present case, the petitioner is asked to pay the interest in an unjust manner and therefore, the same would cause hardship to the petitioner assessee and thus, he is entitled for the waiver of interest.

14. The learned counsel appearing for the petitioner further relied on the judgment in the case of ***Auro Food Limited vs. Commissioner of Income Tax and others*** reported in ***MANU/TN/1701/2004***, which reads thus:

"As rightly pointed out by the learned counsel for the appellant, though necessary details, such as conditions to be satisfied, the grievances expressed by the assessee, etc., have been stated, the authority; who is exercising his quasi-judicial function has not considered each grievance and answered separately by giving adequate reason for rejecting the petitioner for waiver of interest. In this regard learned counsel for the appellant very much relied on the decision of the Apex Court in the case of Kishan Lal v. UOI MANU/SC/2145/1998 : [1998]230ITR85(SC). There also, in order to avoid levy of interest, an application under sub-section (2A) of section 220 of the Act was filed before the CBDT. The Board has rejected the said application by giving the following reason."

15. In the case of ***J.Jayalalitha vs. Commissioner of Income Tax***, the learned Single Judge of the Hon'ble High Court of Madras passed an order on 30.09.1999 remitting the matter back to the authorities for reconsideration in respect of applications filed seeking waiver of interest

under Section 220(2) of the Income Tax Act. The findings made in the said case is that, the Commissioner has not taken into consideration relevant circumstances, but has taken into consideration irrelevant circumstances while rejecting the applications filed by the assessee. Thus, the matter was remitted back for fresh consideration.

16. The learned Senior Standing counsel replied by stating that, those judgments are inapplicable, as far as the details of the petitioner is concerned. None of the three conditions stipulated under Section 220(2A) of the Income Tax Act are complied with. The non-compliance of the conditions resulted in rejection of applications by the first respondent and there is no infirmity as such. It is further contended that the petitioner has not satisfied all the three grounds which are all mandatory under the said provision and it is not as if one condition alone is to be complied with. All the three conditions have to be complied with cumulatively for availing the benefit of waiver of interest and not otherwise. Thus, the judgments cited are of no avail to the petitioner.

17. The learned Senior Standing counsel appearing on behalf of the respondents Income Tax Department disputed the contentions raised on behalf of the petitioner by stating that, the case of the petitioner is not the one where regular assessment order has been passed. There was a search operation conducted in the premises of the petitioner. Admittedly, based on the search and seizure under Section 132 of the Income Tax Act, the assessment orders were passed under Section 153A of the Income Tax Act as the petitioner is a searched person. The petitioner initially had not paid the demand made by the department. There was non-cooperation on the part of the assessee in the present case. Even in such circumstances, the petitioner had no intention to pay the interest based on the demand made under Section 156 of the Act which was communicated along with the assessment order and thereafter, claimed waiver of interest by filing an appropriate application under Section 220(2A) of the Income Tax Act.

18. The learned Senior Standing counsel reiterated that in such cases where demand of interest is made along with the assessment order

then the assessee is bound to pay the interest and thereafter, he is at liberty to file an application before the Competent Authority for waiver of interest and this being the procedures to be followed, it is not necessary that the department should wait for the finality to be reached in the litigation initiated by the parties for the purpose of claiming interest under Section 220(2) of the Act.

19. The interest charged under Section 220(2) of the Act is not a penalty and it is only in the nature of compensation. Therefore, the simple interest has been charged. The interest under Section 220(2) of the Act being compensatory in nature, the assessee in all circumstances is bound to pay and if any difficulty arises, then he is at liberty to file an application. However, in the present case, the assessment orders were passed in the year 2011 and the application seeking waiver of interest was filed by the petitioner assessee only during the year 2017. Even in the other circumstances, the petitioner ought to have paid the tax as per the demand and claimed the waiver of interest. Once the tax demand was not complied with, the department is entitled to claim interest under

Section 220(2) of the Income Tax Act. Therefore, the learned Senior Standing counsel made a submission that the petitioner assessee would have to either paid the demanded tax within the period as contemplated or paid the interest at the time on demand and thereafter submit a waiver petition to avail the benefit under Section 220(2) of the Act.

20. The learned Senior Standing counsel referred the assessment order dated 30.12.2011 for the assessment year 2007-08 and has stated that, it was issued in the year 2011 and therefore, the petitioner would have paid the tax without any delay as per the provisions of the Act. Taking the issues by way of an appeal before the Appellate Authority and thereafter to the Tribunal or to the Court of law, would not preclude the department from charging interest, which is compensatory in nature under Section 220(2A) of the Income Tax Act. Therefore, the delay cannot be attributed against the respondents department, but it is due to the non-payment of demanded tax in time. The petitioner is now bound to pay the interest as compensation. Therefore, the petition is devoid of merits and is to be rejected.

21. Considering the arguments as advanced by the respective learned counsel appearing on behalf of the petitioner as well as the learned Senior Standing counsel appearing on behalf of the respondents, it is necessary to consider the scope of Section 220 of the Income Tax Act. The said section deals, when tax payable and when assessee deemed in default. If the assessee considered as deemed in default, then he is liable to pay the compensatory interest as specified under sub-section (2) of Section 220.

22. Section 220 sub-section (1) states that "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". Therefore any amount of advance tax specified payable or on tax demand is made, the same is to be made within thirty days. If not paid, then sub-section (2) of 220 of the Act come into operation. The sub-section(2) contemplates that "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 1% for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (1) and ending with the day on which the amount is paid".

23. Therefore, sub-section (2) does not contemplate any penalty for belated payment. But, it is the compensatory interest in nature and interest of 1% for every month is contemplated. Such compensatory interest is prescribed in order to make good the financial loss occurred to the revenue on account of delay in payment on advance tax or tax on demand. Therefore, the said provision cannot be compared with the penalty clause.

24. The sub-section 2A of Section 220 reads thus:

"(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.]"

25. The above provision would unambiguously clarify the Principal, Chief Commissioner or Chief Commissioner or Principal 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 with the three conditions stipulated in sub-section 2A. Thus, the Principal Commissioner is at discretion to reduce or waive the amount of interest paid or payable by the assessee. It impliedly indicates that even in case the assessee paid the interest under sub-section 2 of 220, he is entitled to claim waiver of interest by filing an application under Section 220(2A) of the Act and if not paid, then also he is eligible to submit an

application for waiver. However, the discretion is to be exercised by the Principal Commissioner if he is satisfied regarding the three components specifically contemplated under sub-section 2A of the Act.

26. Three conditions are stipulated under the provisions for payment of waiver of interest and all the three conditions are to be fulfilled cumulatively. The genuinity of the hardship is the subjective satisfaction to be adjudicated and assessed by the Competent Authority under the said provision. The second condition that default in payment of tax, due to circumstances beyond the control of the assessee is also to be established with reference to evidences. The evidences must be not only acceptable but must have nexus with reference to the conditions stipulated in the provision. Thirdly, co-operation of the assessee during the course of enquiry relating to the assessment or any proceedings for recording any amount due from the assessee, the records are to be verified and assessee if had sufficient reasons are at liberty to revert the same. However, the non-cooperation is to be considered with reference to the conduct of the assessee during the course of any proceedings under the

Income Tax Act. Thus, all the three conditions contemplated under the said provisions are to be complied with cumulatively.

27. Keeping in mind the imperative conditions stipulated under Section 220(2A) of the Act, let us consider the findings of the first respondent in the impugned order dated 31.05.2018. The application filed by the petitioner under Section 220(2A) of the Income Tax Act was entertained and for adjudication. Once the application is entertained, the Authority Competent is bound to consider the grounds raised. Perusal of the order would reveal that the Competent Authority has considered the assessee's petition and the case records as well. On verification of the case records, the first respondent Competent Authority found that the assessee has never paid the demands in time for both assessment years, i.e., 2007-08 and 2008-09. The details of demand raised but not paid have been furnished in the impugned order are extracted hereunder:

<i>A.Y</i>	<i>2007-08 Demand raised but not paid</i>	<i>2008-09 Demand raised but not paid</i>
<i>143(3) r.w.s.153A</i>	<i>2,08,15,298</i>	<i>1,03,80,948</i>

dated 30.12.2011

154 Order dated 12,51,854

01.03.2012 (based
on assessee petition)

Order Giving effect 32,00,022 1,56,22,934
to CIT(A) Order

Order Giving effect 1,37,58,848
to ITAT Order

154 Order dated 40,93,103 54,32,311

29.03.2017 (based
on assessee petition)

28. The first respondent Competent Authority was conscious about the three mandatory conditions stipulated under the Act and the records indicate the same. Firstly, he has stated that the assessee has not specified any reason that payment of the interest would cause any genuine hardship. However, the judgment submitted on behalf of the petitioner in the case of **Shri B.M.Malani vs. CIT** was taken into consideration for the purpose of considering the case of the writ petitioner. The first respondent formed an opinion that the petitioner has not established any genuine hardship and not paid the taxes within time by making wrong claims. The observation made in the impugned order would reveal that the assessee has not furnished any reasons that default in the payment of interest was beyond the control of the assessee. When the assessment proceedings for both the assessment years 2007-08 and 2009-10 were

completed on 30.12.2011, it is not clear why the assessee has not paid these demands. At least the assessee would have paid these demands after giving effect to CIT(A) dated 27.09.2013.

29. The findings would further reveal that the assessee has not co-operated in completion of the assessment for the following reasons:

"Consequent to search, notice u/s153A of the IT Act was issued on 09.03.2011 calling for return of income within 45 days of the receipt of the notice (i.e., on or before 24.04.2011), but the assessee furnished the return of income only on 15.07.2011. The assessee's explanation was only that records could not be recovered from the accountant. However the assessee could not substantiate the claim with any proof. Again notice u/s 143(2) was issued on 09.09.2011 posting the case on 16.09.2011. Again notice u/s 142(1) of the IT Act was issued on 19.09.2011 posting the case for hearing on 28.09.2011. In response the assessee's AR appeared only on 03.10.2011. Again the case was posted on

10.11.2011. In response the AR appeared only on 05.12.2011.

Further with regard to A.Y. 2007-08, most of the additions made by the Assessing Officer were upheld both by the CIT(A) and ITAT also. Hence it is clear that the assessee has not furnished the full details of the income even after search."

30. The first respondent further made a findings with reference to the assessment years 2008-09 as follows:

"Further with regard to A.Y. 2008-09, while giving effect to the ITAT order on 25.07.2014, there was an omission by the Assessing Officer which was not brought to the notice by the Assessing Officer which was rectified only on 29.03.2017. Hence it is clear that the assessee has not furnished the full details of the income even after search.

Also I have gone through the letter dated 05.02.2014 filed by the assessee in this office wherein he claimed that he is eligible for a refund of Rs.2,07,51,098/- for the A.Y. 2011-12. But at that

time the assessment proceedings for the A.Y.2011-12 was not completed and hence the question of issuing refund may not arise at that point of time."

31. The authority competent relied on the principles for waiver of interest as laid down by the decision of the Hon'ble High Court of Delhi vide its order in WP(C) No. 5750 of 2010 dated 05.01.2012 in connection with writ filed by the Girnar Investment Limited, which reads thus:

"(a) fresh notices of demand need not be issued every time the total income undergoes a change due to appellate or provisional orders since section 3(b)(iii) of the validating Act provides that any proceeding initiated on the basis of the notice of demand served upon the assessee before the disposal of the appeal or other proceeding may be continued in relation to that amount so reduced from the stage at which such proceedings stood immediately before such disposal;

(b) a case where the assessee has paid the full amount of tax demanded by the AO pursuant to the assessment order stands on a different footing from a case where such demand was not satisfied in full and

different considerations shall apply to such a case;

(c) the original demand made by the AO on the basis of the assessment order is merely kept in abeyance or suspension during the entire proceedings by way of appeal or revision taken against the assessment and gets revived from inception once the assessment gets finally confirmed in those proceedings;

(d) when the assessment order is finally affirmed, the doctrine of merger also applies and interest being compensatory in nature, the revenue is entitled to charge the same from the date of the original order which merged with the final appellate order;

(e) as a corollary to the above, it follows that where an assessment is restored and the original demand gets revived from inception, the assessee is liable to pay interest u/s.220(2) of the Act from that date on the unpaid amount and any variation in the amount of the demand favorable to the assessee which was directed by any of the appellate authorities in the interregnum has no effect on the liability of the assessee to pay the interest."

32. As far as the judgment cited by the learned counsel for the petitioner in the case of **B.M.Malani** cited *supra*, the Hon'ble Apex Court in clear terms held that, the genuine hardship would mean genuine difficulty which is to be established. In this regard, the learned counsel for the petitioner reiterated that mere possession of assets by the assessee cannot be a disqualification to consider the ground of genuine difficulty. Certainly, the learned counsel for the petitioner is right in saying so. However, the genuine difficulty as defined is the subjective satisfaction of the authority competent, which is to be established by the assessee. Therefore, there is no quarrel on the principles relied on. However, such principles must be applied with reference to the facts and circumstances established in the case on hand. The Hon'ble Apex Court ruled that as per the provisions all the three conditions are to be complied cumulatively for the purpose of entitlement of waiver of interest. In the present case, the first respondent / Commissioner considered the petition filed by the assessee with reference to the records / documents. The findings are made based on the records available and the said findings would reveal that, the petitioner assessee had not paid the demands for

both the assessment years. The details of non payments were also furnished in the impugned order. The contention of the petitioner that, the original Assessing Officer has not stated anything about the non-cooperation in the assessment order deserves no merit consideration. The Assessing Officer while passing the original assessment order need not record any such non-cooperation as the assessment order was not an *ex-parte* order. Only when an application is filed seeking waiver of interest, then the question arises, whether the assessee co-operated for completion of the income tax proceedings or not. Since for claiming waiver of interest co-operation is contemplated as a condition. Therefore, it is necessitated for the parties, while adjudicating the petition filed by the assessee seeking waiver of interest. Thus, the conduct of the assessee throughout the income tax proceedings are vital for the purpose of claiming waiver of interest. The respondents in the present case recorded the non-cooperation of the petitioner assessee. The observations made in this regard would establish that consequent to search notice under Section 153A of the Income Tax Act dated 09.03.2011 calling for return of income within 45 days of the receipt of the notice. But the assessee

furnished the return of income only on 15.07.2011. The other incidents are also recorded to establish that the petitioner assessee had not co-operated for the completion of the Income Tax proceedings. This being the factum established, this Court has no hesitation in arriving at a conclusion that the petitioner has not established all the three conditions stipulated in the provisions for the purpose of grant of waiver of interest. Contrarily, the reasons furnished in the impugned order for rejection of application for waiver of interest are candid and convincing.

33. Thus, the Writ Petition fails and stands dismissed. However, there shall be no order as to costs.

सत्यमेव जयते

04.08.2021

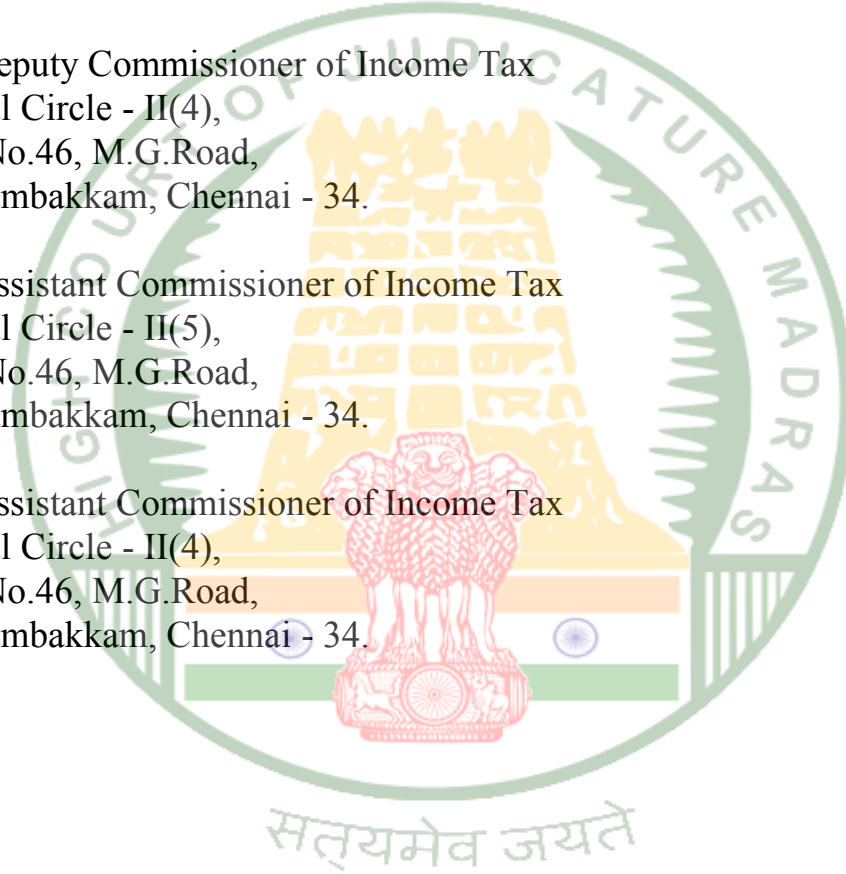
Index: Yes
Speaking Order: Yes

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To

1. The Principal Commissioner of Income Tax
Central 2,
Nungambakkam,
Chennai - 34.
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