(1996) 01 KL CK 0021

In the High Court Of Kerala

Case No : Original Petition No. 7082 of 1991-R

A.K. Azad — APPELLANT

Vs

Commissioner of Income Tax and Another — RESPONDENT

Date of Decision : 01-01-1996

Acts Referred:
Income Tax Act, 1961 — Section 220(2A)

Citation : (1996) 220 ITR 349

Hon'ble Judges : N. Dhinakar, J

Bench : Single Bench

Advocate : P.G.K. Wariyar, for the Appellant; P.K.R. Menon, for the Respondent

Judgement

N. Dhinakar, J.—This original petition is to quash exhibit P-7 order passed by the Commissioner of Income Tax refusing to waive a sum of Rs. 20,383 as interest on the assessed taxable amount. The petitioner''s contention is that as he has obtained stay of the recovery, the authorities ought not to have levied interest on the taxable amount. Counsel appearing for the Department submits that the levy of interest is automatic and it is axiomatic and it does not depend upon the whims and wishes of the authority. In support of his contention, he relies upon Sub-section (2A) of Section 220 of the Income Tax Act, 1961, which reads as follows :

"(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 of 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."

2. A reading of the above section shows that interest can be waived only if the conditions laid in the above section are satisfied. The stay obtained by the petitioner is only a stay for the recovery of the amount and not for the levy. Obtaining stay will not be a ground under Sub-section (2A) of Section 220 of the Income Tax Act to waive the interest. In my view the order of the Commissioner needs no interference. This writ petition, in my view, deserves to be dismissed and accordingly, it is dismissed.