(2011) 07 KL CK 0186

In the High Court Of Kerala

Case No : Writ Petition (C) No. 17449 of 2011 (E) (A.Y. 2006-07)

Arun Sunny — APPELLANT

Vs

Chief CIT — RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:
Income Tax Act, 1961 — Section 156, 220(2), 220(2A), 226(3), 264

Citation : (2012) 209 TAXMAN 105

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : S. Vijayan Nayar, for the Appellant;

Final Decision : Dismissed

Judgement

1. The petitioner is an assessee under the Income Tax Act. By Ext. P1 order, tax was assessed on him. The petitioner challenged the assessment in an appeal and a second appeal. Both were dismissed. During the pendency of the appeals, the petitioner had obtained conditional stay against recovery proceedings. Subsequently, the petitioner paid the entire amount due by Ext. P2. The petitioner was directed to pay interest on the defaulted tax and interest till the date of payment. The petitioner invoked the jurisdiction of the 1st respondent u/s 220(2A) of the Income Tax Act seeking waiver or reduction of the interest payable. That petition was rejected by Ext. P4 order holding that the petitioner has not satisfied the conditions in Section 220 (2A) for becoming eligible for waiver of interest. That is under challenge in this writ petition. The petitioner also raises a contention that in Ext. P2 interest has been calculated on interest also, which is not permissible. The petitioner contends that the 1st respondent has not properly applied his mind to the facts and law applicable. He submits that in the appeals, the petitioner applied for and obtained conditional stay. The petitioner promptly complied with the conditions of stay. So until dismissal of the appeal by the Tribunal, there was a stay of payment of balance tax. As such, the petitioner was not at default at any time. He points out that, as is evident from Ext. P4, the

petitioner paid the entire balance amount within a span of three months. He submits that the same has been considered as non-co-operation in the proceedings for collection of tax, which is totally arbitrary and against various decisions on the point. According to the petitioner, filing appeals and obtaining stay cannot be considered as non-co-operation with the proceedings for collection of tax.

2. The learned Standing Counsel for the Income Tax Department opposes the contentions of the petitioner. According to him, merely because an assessee obtains a stay from the appellate authorities, that does not ipso facto operate as a stay of accrual of interest on the defaulted tax as well. Once the appeal is ultimately dismissed, the entire assessed amount would be payable with full interest. He submits that the three conditions mentioned in Section 220 (2A) have to be satisfied cumulatively for an assessee to claim benefit of Section 220(2A). He points out that as is evident from Exts. P3 and P4, the petitioner did not succeed in proving that payment of the tax would have caused hardship to him and that the non-payment was on account of circumstances beyond his control. On the other hand, his contention was that all his money was locked up in deposits in banks and financial institutions and if he withdraws the deposits prematurely, he would lose interest. According to the learned counsel for the Income Tax Department, that cannot operate as a circumstance beyond the control of the assessee and genuine hardship to the assessee. He had money with him and in order to make money with that money, he did not pay the tax due, which cannot be accepted as a genuine hardship or circumstance beyond the control of the assessee, is the contention.

3. As regards the second contention, he would point out that Ext. P2 demand for interest was dt. 17-6-2009. The petitioner never raised any objection to the same even in Ext. P3. The petitioner does not dispute the correctness of the computation of that amount. According to him, Section 220 (2A) can be invoked only when the assessee accepts the interest payable as demanded and seeks waiver or reduction thereof. After having invoked Section 220(2A), the petitioner cannot now dispute the correctness of the interest demanded is the contention raised. He also points out that against Ext. P2 demand for interest, the petitioner could have very well filed a revision u/s 264 before the Commissioner, which has not been done in this case.

4. The petitioner relies on various decisions in support of his contentions, which are:

(i) P. Ramasamy Vs. Commissioner of Income Tax and Others, ;

(ii) KISHAN LAL Vs. UNION OF INDIA AND ANOTHER., ;

(iii) Common Wealth Trust (India) Ltd. Vs. Deputy Commissioner of Income Tax and Others, ;

(iv) J. Jayalalitha Vs. Commissioner of Income Tax and Others, ;

(v) Chief Commissioner of Income Tax and Another Vs. Jimmichan M. Varicatt, : Chief Commissioner of Income Tax and Another Vs. Jimmichan M. Varicatt, .

5. I have considered the rival contentions in detail.

6. Section 220(2A) reads thus:

220........

(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 the 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.

As is clear from the same, three conditions mentioned therein should be cumulatively satisfied to enable the assessee to avail of the benefit of that section. First of all, the petitioner should prove that payment of the said amount would cause genuine hardship to him and secondly, that default in payment of demand on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee. Ext. P4 order reads thus:

The assessee by his application dt. 02-7-2009 filed in this office on 06-7-2009 has sought waiver of interest charged u/s 220(2) of Rs. 9,48,640 for the delay in payment of the tax demanded for the A.Y. 2006-07. The application was posted for hearing and Shri C.V. Sunny, father of the assessee appeared on authorization He has been heard.

2. The demand for Rs. 2,17,73,630 which fell due for payment in January 2009 was paid in the following manner:-

A sum of Rs. 9,48,640 was charged u/s 220(2) for the delayed payment of tax for the period from January 2009 to June 2009.

3. According to the assessee, the non-payment of the demand within the stipulated time was due to circumstances beyond his control for the reasons given below:

(i) There was no liquid cash available for making the tax payment as the entire money received on sale of property had been invested as term deposits in banks and financial institutions. It was difficult to withdraw the deposits before the dates of maturity.

(ii) Due to various technical reasons, the banks and financial institutions in which the assessee had deposits, did not make tax payment directly to the Department on the basis of notices issued by Assessing Officer u/s 226(3) of the Act on 16-3-2009.

(iii) The recovery of tax stood stayed from 19-3-2009 to 30-6-2009 by the ITAT, Kochi.

It is also contended that tax payment before the stipulated date would have caused genuine hardship to him as withdrawal of term deposits before maturity would have resulted in loss of interest receipts. It is also contended that he had cooperated with the Department during the assessment proceedings and for remittance of the tax. Accordingly, the assessee has sought waiver of interest u/s 220(2A) of the Act.

4. Admittedly, the tax demanded in this case was not paid within the time prescribed in the notice of demand u/s 156. As such the assessee was in default from January 2009 onwards. Notices u/s 226(3) issued on 16-3-2009 could not be enforced by the Assessing Officer due to stay of collection of demand granted by the ITAT from 19-3-2009 at the instance of the assessee. Non-availability of liquid cash for tax payment, or non-collection of tax on the basis of notice u/s 226(3), or stay of recovery of tax by ITAT, cannot be a ground for waiver of interest u/s 220(2A). The assessee had received Rs. 11 crores from sale of land and was having substantial deposits in Banks and other financial institutions. Had the assessee so decided, he could have even prematurely encashed some of the deposits for paying the tax. Instead of clearing the tax liability within the stipulated date with a view to avoid payment of interest u/s 220(2), the assessee chose to wait for maturity of the term deposits for making tax payment. As such the payment of interest u/s 220(2) of Rs. 9,48,640 in this case would not have caused genuine hardship to the assessee. The default committed in the payment of tax was admittedly for avoiding loss of interest on term deposits from banks, and as such was intentional. It cannot, therefore, be claimed that default in the payment of tax was due to circumstances beyond the control of the assessee. The assessee caused unnecessary hindrance to collection by applying for stay of operation of the notice of attachment u/s 226(3) issued by the Assessing Officer on 16-3-2009. As such, the assessee has not co-operated with the proceedings for collection of the tax which was due from him.

5. In the light of the above facts, it is found that the conditions specified in section 220(2A) are not satisfied in this case for ordering waiver of interest charged u/s 220(2) of the Act. It is settled law that all the three conditions prescribed in section 220(2A) are to be satisfied cumulatively for making eligible a case for waiver of interest u/s 220(2). None of the conditions is satisfied. Therefore, this is not a fit case for waiver of the interest. The application for waiver of interest u/s 220(2A) for the A.Y. 2006-07 is rejected.

(underlining supplied)

7. The petitioner does not dispute the narration of the contention of the petitioner in paragraph 3 is not correct. Therefore, his contention in support of condition Nos. 1 and 2 was that he had no liquid cash available for paying tax as the entire money received on sale of properties had been invested as term deposits in banks and financial institutions and if he closes the same before the dates of maturity, he would lose interest. I am not satisfied that that would amount to satisfaction of condition Nos. 1 and 2. The gist of the contention of the petitioner is that he had money to pay the amount of tax, but since the same is locked up in deposits in banks and financial institutions, if he withdraws the said deposits before its maturity, he will lose interest on the same. That means he wants his deposits to accrue interest and at the same time, he wants to deny the Income Tax Department interest legitimately due to them. The same cannot be a situation where the payment of tax would cause genuine hardship to the assessee or a situation where the petitioner did not pay the tax due to circumstances beyond the control of the assessee. In view of the fact that I am satisfied that condition Nos. 1 and 2 have not been satisfied in the case of the petitioner, even if the contention of the petitioner regarding non-co-operation in the enquiry relating to the assessment is accepted, it will make no difference insofar as all the three conditions have to be cumulatively satisfied, I am not going into the satisfaction of the 3rd condition mentioned in Section 220(2A). Therefore, I do not find anything wrong with Ext. P4 order, by which, the Chief Commissioner of Income Tax denied the petitioner benefit u/s 220(2A). As far as the other contention is concerned, I do not think that interest on interest has been charged on the petitioner. There is noting on record to show that interest on interest has been demanded from the petitioner. Only permissible interest has been charged on the petitioner. Even otherwise, Ext. P2 is dt. 17-6-2009. The petitioner did not dispute the interest charged at any point of time except in this writ petition. Not even in Ext. P3 he had such a contention. That being so, I am not inclined to exercise my discretionary jurisdiction in favour of the petitioner to interfere with the said demand. In view of my above findings, I find no merit in this writ petition and accordingly, the same is dismissed.