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(1998) 10 MAD CK 0047

In the Madras High Court

Case No : Writ Petition No. 15500 of 1996

Dr. K. Mohan Rao APPELLANT

Vs

Commissioner of Income Tax and Another RESPONDENT

Date of Decision : 12-10-1998

Acts Referred:
Income Tax Act, 1961 — Section 234A, 234B, 234C

Citation : (2000) 241 ITR 94

Hon'ble Judges : N.V. Balasubramanian, J

Bench : Single Bench

Advocate : K. Ramagopal, for the Appellant; S.V. Subramaniam and C.V. Rajan, for the Respondent

Judgement

N.V. Balasubramaniam, J.—This writ petition is filed to quash the order of the second respondent passed in proceedings No. 21/IV/138 of

1993-I.T. dated February 8, 1996, and to direct the Settlement Commission to consider the application for waiver of interest leviable under

Sections 234A, 234B and 234C of the Income Tax Act, 1961 (hereinafter to be referred to as ""the Act"").

2. The petitioner is a doctor by profession. There was a search in his premises and the petitioner moved the Settlement Commission, Additional

Bench, Madras, for settlement of his tax liabilities for the assessment years 1987-88 to 1992-93. He also prayed for waiver of interest and

penalties leviable under the Act. The Settlement Commission in the order passed initially did not indicate the basis under which it had refused to

waive the interest levied under Sections 234A, 234B and 234C of the Act, The petitioner therefore filed a miscellaneous petition for clarification

and direction as regards interest under Sections 234A, 234B and 234C of the

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Act. Since the Tribunal has observed that the Settlement

Commission has the power to waive the interest, he sought for a direction regarding waiver of the interest. He also submitted that the levy of

interest is not in accordance with law and he prayed that the Settlement Commission should have exercised its power to waive the interest under

Sections 234A, 234B and 234C of the Act. The Settlement Commission passed the impugned order holding that it followed an earlier order of the

Special Bench of the Settlement Commission in the case of ASHWANI KUMAR AGGARWAL, IN RE., , wherein it was held that the

Settlement Commission has no power to waive interest under Sections 234A 234B and 234C of the Act and hence, it did not consider the

application of the petitioner for waiver of interest for the assessment years 1989-90 to 1992-93 as the levy of interest is mandatory in law. It is this

order which is the subject-matter of this writ petition.

3. Mr. Ramagopal, learned counsel for the petitioner, submitted that subsequent to the order of the Settlement Commission passed in the present

proceedings the Income Tax Settlement Commission, Mumbai, Special Bench has considered the question in the case of M.V. Javali Vs. Mahajan

Borewell and Co. and Others, and held that the Settlement Commission has the necessary powers to consider the reduction or waiver of interest

leviable under Sections 234A, 234B and 234C of the Act on requisite application being filed. He therefore submitted that in view of the

subsequent decision of the Settlement Commission, Special Bench in M.V. Javali Vs. Mahajan Borewell and Co. and Others, the matter should be

remitted to the Settlement Commission to consider the matter once again in the light of the said decision.

4. Mr. S.V. Subramaniam, learned senior counsel for the first respondent, submitted that it is no doubt true that the Settlement Commission has

overruled its earlier decision in the case of ASHWANI KUMAR AGGARWAL, IN RE., . He further submitted that the earlier decision in

ASHWANI KUMAR AGGARWAL, IN RE., , is pending before the apex court for consideration.

5. I have carefully considered the submissions of learned counsel for the parties. The fact remains that the Settlement Commission in its order in

M.V. Javali Vs. Mahajan Borewell and Co. and Others, , has overruled its earlier

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decision in ASHWANI KUMAR AGGARWAL, IN RE., and

held as under (headnote) :

that where orders u/s 245D(4) were passed, without considering on the merits, the applicants'' request for reduction/waiver of interest under

Sections 234A, 234B and 234C, on requisite applications being filed in those cases, these may be examined with reference to the facts and

circumstances of each case and, where the grant of any relief is justified, such relief may be granted.

6. In view of the aforesaid decision of the Special Bench of the Settlement Commission, the impugned order of the Settlement Commission that it

has no power to consider the request of the petitioner for waiver of interest is not legally sustainable in law. The Settlement Commission in M.V.

Javali Vs. Mahajan Borewell and Co. and Others, , has also made the following observations (page 43) :

We hold that where orders u/s 245D(4) were passed, without considering on the merits, the applicant''s request for reduction/ waiver of interest

under Sections 234A, 234B and 234C, on requisite applications being filed in those cases, these may be examined with reference to the facts and

circumstances of each case and, where the grant of any relief is justified, such relief may be granted.

7. The above direction of the Settlement Commission makes it clear that on requisite application being filed, the Settlement Commission would

consider the request for reduction or waiver of the interest under Sections 234A, 234B and 234C of the Act. On the facts of the case, it is seen,

the Settlement Commission by the impugned order rejected the request of the petitioner for the reduction or waiver of interest on the basis of its

earlier decision. However, in view of the decision of the Special Bench of the Settlement Commission in M.V. Javali Vs. Mahajan Borewell and

Co. and Others, , holding it has powers, the impugned order is set aside. It is also made clear that since the Settlement Commission itself has

reversed its earlier order, it is not necessary to consider the question of jurisdiction of the Settlement Commission to grant waiver of interest under

Sections 234A, 234B and 234C of the Act and the parties are given the liberty to agitate the question of jurisdiction as and when the occasion

arises. I further hold that once the impugned order is set aside, it must be held

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that the application earlier filed by the petitioner before the

Settlement Commission must be held to be pending on its file and hence it is not necessary for the writ petitioner to file another application before

the Settlement Commission to consider his case for the reduction or waiver of interest under Sections 234A, 234B and 234C of the Act. The

Settlement Commission is directed to consider the application earlier filed by the writ petitioner for reduction or waiver of interest under Sections

234A 234B and 234C of the Act on the merits of the case and in the light of its subsequent decision and pass orders in accordance with the law.

Subject to the above, the writ petition is allowed. In the circumstances of the case, there will be no order as to costs.

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