(2009) 09 MAD CK 0302

In the Madras High Court

Case No : Writ Petition (MD.) No. 6327 of 2006 and M.P. (MD.) No. 1 of 2006

Mani APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 119, 119(1), 119(2)(a), 139(8), 158BC

Citation : (2010) 190 TAXMAN 417

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : N. Sankar Ganesh, for the Appellant; R. Krishnamurthy, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner has filed the above writ petition for issuance of a Writ of Certiorarified Mandamus to quash the order of the respondent, dated 6-3-2006, and for a consequential direction to allow the petition for waiver of interest filed by the petitioner on 18-7-2005. The petitioner, an income tax assessee, is engaged in the business of collecting entrance fees from the markets controlled by the Melur Municipality, Madurai District. He is also a civil contractor and a real estate agent and also carrying on agricultural operations. A search was conducted by the income tax department on 5-3-1997 in the business premises of the petitioner. Consequent upon search and seizure operation, a notice u/s 158BC of the income tax Act (in short, ''Act'') was issued on 31-3-1997, requiring the petitioner to prepare a true and correct return of his total income including the undisclosed income in respect of which he is assessable for the block period commencing from 1-4-1986 ending on 5-3-1997. The petitioner on 8-3-1999 furnished the return of income in Form 2B. After affording an opportunity of hearing, a block assessment order was passed u/s 158BC of the Act for the block period from 1-4-1986 to 5-3-1997 by an order dated 31-3-1999 demanding a sum of Rs. 4,00,968 as tax.

2. The petitioner assailed the correctness of the assessment order by preferring an appeal before the Commissioner of income tax (Appeals)-VIII, Chennai in ITA No. 392/1999-2000 on 13-8-1999 and the Commissioner of income tax (Appeals), by order, dated 26-3-2001, granted relief to the petitioner and determined the income tax liability at Rs. 3,71,415. The petitioner preferred further appeal to the income tax Appellate Tribunal, Chennai in IT(SS) A. No. 75/ MDS./2001 and the Tribunal by order, dated 26-4-2005, held that the undisclosed investments were to the extent of Rs. 1,75,000, for which the petitioner has to pay Rs. 1,14,600 as tax and Rs. 55,008 as interest u/s 158BFA. According to the petitioner, he paid the tax of Rs. 1,14,600 along with interest of Rs. 55,008 u/s 158BFA in 8 instalments starting from 4-2-2004 to 24-6-2005. Subsequently, the petitioner filed an application u/s 220(2A)(ii)(iii) of the Act for waiver of the penal interest of Rs. 1,41,252 and the same came to be rejected by order, dated 6-3-2006, which is impugned in the writ petition.

3. The petitioner has questioned the impugned order on the ground that the dismissal of the claim of the waiver of interest is irrational and irrelevant because it is an admitted fact that the petitioner has honoured the entire tax liability as well as the interest portion by paying in 8 instalments ranging from 4-2-2004 to 24-6-2005. It is further stated by the petitioner that the respondent failed to appreciate properly the scope of section 220(2A) of the income tax Act, 1961, more particularly clauses (ii) and (iii) and stated that the condition in clause (iii) is squarely applicable to the petitioner and the respondent erred in not granting the waiver of interest. It is further stated that the payment of the tax as well as the interest u/s 156BFA in 8 instalments would establish that the petitioner fully co-operated in the enquiry and recovery proceedings, which entitles him to get waiver of interest u/s 220(2A) of the Act.

4. The petitioner also placed reliance upon the circular issued by the Central Board of Direct Taxes, dated 21-5-1996. Further, it is stated by the petitioner that the genuine hardship of the assessee was not taken into consideration and that the default in payment of tax, on which the interest has been levied, was due to the circumstances beyond the control of the assessee and further the conduct of the petitioner in co-operating with the enquiry relating to the assessment, were all relevant factors which ought to have been considered by the respondent. Further, the petitioner would contend that the impugned order is devoid of reasons and on that ground also the same is liable to be set aside.

5. The learned counsel placed reliance upon the Judgment of the Hon''ble Supreme Court in UCO Bank, Calcutta Vs. Commissioner of Income Tax, West Bengal, wherein the Hon''ble Supreme Court while considering the scope of a circular issued by the Central Board of Direct taxes held in paragraph 9 as follows:

What is the status of these circulars? section 119(1) of the income tax Act, 1961 provides that, ''The Central Board of Direct Taxes may, from time to time, issue such orders, instructions and directions to other income tax authorities as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:

Provided that no such orders, instructions or directions shall be issued (a) so as to require any income tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or (b) so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions''. Under sub-section (2) of section 119, without prejudice to the generality of the Board''s power set out in sub-section (1), a specific power is given to the Board for the purpose of proper and efficient management of the work of assessment and collection of revenue to issue from time to time general or special orders in respect of any class of incomes or class of cases setting forth directions or instructions, not being prejudicial to assessees, as the guidelines, principles or procedures to be followed in the work relating to assessment. Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board thus has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers u/s 119 of the income tax Act which are binding on the authorities in the administration of the Act. u/s 119(2)(a), however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forego the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manner as laid down in section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorised as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities." (p. 605)

Therefore, the learned counsel for the petitioner submitted that the circular issued by the Central Board of Direct Taxes is binding on the department and the petitioner is entitled to the relief.

6. The petitioner placed reliance upon the judgment of the Hon''ble Supreme Court in Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, wherein, the Hon''ble Supreme Court held in paragraph 34 as hereunder:

The learned Solicitor General has pointed out that by virtue of the power vested in the Board u/s 119(2)(a) of the Act, the Board has issued circulars, by Notification No. F. No. 400/234/95-IT(B), dated 23-5-1996. As per this circular, it has empowered that the Chief Commissioner of income tax and Director General of income tax may waive or reduce interest charged under sections 234A, 234B and 234C of the Act in the class of cases or class of incomes specified in paragraph 2 of the said order for the period and on conditions which are enumerated therein. He submitted that in view of the said circular, the same authority can be exercised by the Commission since the said circular would amount to relaxation of the rigour of sections 234A, 234B and 234Cof the Act. We are in unison with this submission of the learned Solicitor General. This Court in a catena of cases has held that the circulars of the Central Board of Direct Taxes are legally binding on the revenue. See UCO Bank, Calcutta Vs. Commissioner of Income Tax, West Bengal, Since these circulars are beneficial to the assessees, such benefit can be conferred also on the assessees who have approached the settlement commission u/s 245C of the Act on such terms and conditions as contained in the circular. In our opinion, it is for this purpose that section 245F of the Act has empowered the settlement commission to exercise the power of an income tax authority under the Act. We must clarify here that while exercising the power derived under the circulars of the Board, the commission does not act as a subordinate to the Board but will be enforcing the relaxed provisions of the circulars for the benefit of the assessee in the process of settlement.

7. Next the learned counsel placed reliance upon the judgment of the Hon''ble Supreme Court in Jaswant Rai v. CBDT [1998] 98 Taxman 230, wherein the Hon''ble Supreme Court considered the scope of section 271(4A) of the income tax Act relating to the waiver of penalty, wherein the Hon''ble Supreme Court in paragraph 6 held as hereunder:

A reading of the provisions of section 271(4A) [after deletion or the said provisions by Taxation Laws (Amendment) Act, 1975 with effect from 1-10-1975 such power is now conferred upon the Commissioner u/s 273A of the Act] will indicate that it is a power coupled with a duty to do justice and the Commissioner is under statutory obligation to exercise the power in favour of an assessee which has fulfilled all the conditions of the provisions. In deciding such a matter, therefore, cannot take into account factors or reasons which are invalid or extraneous to the said provisions. The principal condition for grant of relief under the said provision is that the assessee should have voluntarily and in good faith made full disclosure of his income prior to the detection of the same and such disclosure could be made even otherwise than in the course of a return by submitting a petition to the Commissioner. In the present case, we have already noticed that the assessee had made the disclosure prior to the coming into force of the voluntary disclosure scheme and long before the Department could initiate any action in respect of the concealed income. The levy of penalty u/s 271(1)(c) by itself will not be a circumstance to take him out of the purview of section 271(4A) of the Act. (p. 235)

8. The learned counsel by placing reliance upon the judgment of the Hon''ble Division Bench of the instant Court in M. Ganesan v. Vice-Chairman CDJ 2007 MHC 1515, wherein, the Division Bench held in paragraph 7 as follows:

The perusal of the Board''s order dated 23-5-1996 lists out the circumstances under which a reduction or waiver of interest u/s 234A, 234B and 234C can be considered. Given this power of waiver and the circumstances under which it could be considered, the authority before whom a petition is made, is bound to consider the circumstances warranting a rejection or a reduction. Devoid of reasons indicated for reduction, it is difficult to uphold the order of the first respondent. The first respondent had given the waiver of 50 percent as regards the interest chargeable under sections 139(8), 215 and 217 of the Act. Considering the fact that the order does not disclose the reasons for restricting the waiver to 50 percent as regards the interest under sections 139(8), 215 and 217 of the Act and not considering the plea of waiver in respect of interest chargeable under sections 234A, 234B and 234C, we set aside the order of the first respondent, directing the first respondent to consider the claim of the assessee as regards the waiver of interest levied under the provisions stated above and pass afresh a considered order after giving sufficient opportunity in accordance with law." (p.)

9. The petitioner placed reliance upon the Judgment of the instant Court in Kanchipuram Silk Handloom Weavers'' Co-operative Marketing Society Ltd. v. CIT [2008] 167 Taxman 13 which was also a writ petition filed challenging the order of the Commissioner of income tax rejecting the request of waiver, wherein the Hon''ble Division Bench of the instant Court held in paragraph 15 as follows:

In the case on hand, the petitioner has projected the reasons for granting waiver, taking a considerate view. The first respondent herein has stated that there is no whisper of any facts and circumstances which compelled the inaction on the part of the assessee. The perusal of the order shows that the first respondent has not considered the various circumstances projected in its petition and the explanations offered on the question of its financial difficulties and hardships faced. In the circumstances, we accept the plea of the petitioner herein to the extent that the matter requires re-consideration at the hands of the first respondent. Considering the detailed petition made by the petitioner herein, in fitness of things, it is necessary that the Commissioner considers the facts projected and pass orders in accordance with law." (p. 18)

10. Next the learned counsel placed reliance upon the Judgment of the instant Court in Mr. T.N. Arumugam Prop. Sri Jayalakshmi Textiles Vs. The Chief Commissioner of Income Tax and The Income Tax Officer, , where a writ petition was entertained against a rejection of the request of waiver of interest, wherein the instant Court has held in paragraph 7 as follows:

In the light of the same, the petitioner is entitled to succeed. However, this Court is not in granting any direction to refund the amount as originally prayed for in the writ petition. It is suffice to say that the first respondent shall consider the circumstances under which the petitioner was unable to pay the tax earlier and also the justification of his seeking for waiver and refund of the interest amount paid. The petitioner also shall be given an opportunity by the first respondent to put forth any additional points in his favour. The first respondent shall consider the representation of the petitioner and also any additional representation made by him and pass an appropriate order within a period of four weeks from the date of receipt of a copy of this order." (p. 218)

11. The petitioner also placed reliance upon the decision of the Hon''ble Supreme Court in B.M. Malani Vs. Commr. of Income Tax and Another, thereunder the Hon''ble Supreme Court was considering the validity of an order passed by the Commissioner of income tax rejecting the application of waiver u/s 220(2A), wherein the Hon''ble Supreme Court in paragraph 19 held as hereunder:

19. ...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." (p. 625)

12. The petitioner also placed reliance upon an order passed by the instant Court in V. Akilandeswari v. CIT CDJ 2009 MHC 2195, the instant Court after relying upon the decision of the Division Bench in Kanchipuram Silk Handloom Weavers'' Co-operative Marketing Society Ltd.''s case (supra) held in paragraph 12 as follows:

Applying the ratio of this Court noted above, it is seen in the present case that the petitioner has paid the tax voluntarily and has also pleaded a good and sufficient reason for the non-payment of tax on time. The fact of the death of the petitioner''s father who was looking after the business, and as well as the petitioner''s mother and guardian was an house wife unfamiliar with such transactions, is not denied by the respondent. On the contrary, he has given some logical interpretation for overruling the claim made by the petitioner. In the present case, the entire tax amount for the years 1991-92 and 1992-93 have been paid by the petitioner. She has also paid some extra amount. The claim made by the petitioner is bona fide and genuine and the respondent has not exercised his discretion in terms of law.

13. On these grounds and based on various decisions cited supra, the petitioner prayed for setting aside the impugned order.

14. Mr. R. Krishnamurthy, the learned Senior Standing Counsel for the income tax Department by relying upon the counter-affidavit filed, would submit that total tax worked out to Rs. 1,69,608 and this amount should have been paid before 30-4-1999 and the petitioner''s request to pay tax in instalments was considered and direction was given to the Tax Recovery Officer to collect the due in monthly instalments of Rs. 30,000 each and further the petitioner defaulted in

the instalments and the scheme was cancelled and intimated to the petitioner on 24-8-2004. Thereafter, the petitioner made a representation on 9-9-2004 praying for stay of collection of tax till the disposal of the second appeal, which was rejected on 2-11-2004. Again on a representation made by the petitioner, the entire tax arrears including interest u/s 220(2) were directed to be paid from 16-11-2004 in five monthly instalments and the petitioner defaulted in the said instalment payment and sale proceedings were initiated. Thereafter, the petitioner again filed a stay petition to the Chief Commissioner of income tax on 15-3-2005 and the Chief Commissioner of income tax by proceedings, dated 21-3-2005, stayed the collection subject to the condition that the petitioner has to pay Rs. 1 lakh on or before 28-3-2005. Therefore, the learned Senior Standing Counsel for the department would submit that the petitioner failed to honour the opportunity given at different points of time and there has been a total non-co-operation in the recovery proceedings, which is one of the conditions which are required to be fulfilled u/s 220(2A) and, therefore, the petitioner is not entitled for any further indulgence.

15. Regarding the circular relied upon by the petitioner, issued by the Central Board of Direct Taxes, dated 21-5-1996, the learned Senior Standing Counsel for the respondent would submit that the said circular is applicable only for waiver of interest u/s 234 of the Act and has no applicability to the instant case. Further, the learned Senior Counsel would submit that the petitioner is a very prominent real estate developer and the plea raised by him for non-payment of tax despite several indulgences granted to him is a supine indifference to pay tax and the Department was extra kind to the petitioner. Therefore, the respondent was fully justified in rejecting the claim.

16. I have carefully heard the submissions made by the learned counsel on both sides and considered the materials on record.

17. The issue which has to be considered in the instant case is as to whether the petitioner is entitled for waiver of penal interest u/s 220(2A) of the Act, which reads as follows : 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.

18. The scope of this provision, came to be analysed by the Hon''ble Supreme Court as well by the instant Court in various decisions some of which have been referred by the learned counsel for the petitioner as stated supra, and it was held that the power under the said provision is discretionary.

19. From a perusal of section 220(2A), it is clear that that section begins with a non obstante clause and is a self-contained provision. It overrides the charging provision as contained in section 220(2) but also restricts the power of the authority concerned to reduce or waive the amount of interest paid or payable by an assessee only if he is satisfied that the conditions as set out in the three clauses are satisfied as held by the Hon''ble Supreme Court in the case of B.N. Malani (supra). It is to be kept in mind that for claiming reduction or waiver u/s 220(2A), the assessee has to satisfy all the three conditions cumulatively. In other words, he has to not only show that the payment of the amount has caused or would cause genuine hardship to him but also that the default in payment of the amount on which interest has been paid or was payable u/s 220(2), was due to circumstances beyond his control and further that he had co-operated in the enquiry relating to the assessment or any proceeding for recovery of any amount due from him [see, Metallurgical & Engg. Consultants (India) Ltd. v. CIT [1999] 103 Taxman 542 (Patna).

20. Section 220(2A) of the Act provides three conditions and for the interest to be waived, all the three conditions are to be satisfied. First of such conditions being that payment of said amount would cause genuine hardship to the assessee. Lack of hardship or failure to establish financial difficulties, has been held not to be cause of genuine hardship and, therefore, not eligible for waiver. The second condition to be fulfilled is that the default in payment of tax is due to circumstances beyond the control of the assessee and the third condition is that the assessee has co-operated in any enquiry relating to the assessment or recovery proceedings.

21. The instant Court in P. Ramasamy Vs. Commissioner of Income Tax and Others, held that pursuit of remedies available to the assessee under the Act cannot be construed as non-co-operation with the department, unless the pursuit has been of a cantankerous nature, obstructive or evasive.

22. The Hon''ble Supreme Court in KISHAN LAL Vs. UNION OF INDIA AND ANOTHER., held that when an application is filed under sub-section (2A) of section 220 of the Act, the authority concerned is called upon to take a quasi-judicial decision and if it is satisfied that the reasons contained in the application would bring the case under clauses (i), (ii) and (iii) of section 220(2A), then it has power either to reduce or waive the amount of interest. It was further held that even though in the said sub-section, it is not stated that reasons are to be recorded in the order deciding such an application, the same should be decided by a speaking order and the Principles of natural justice in this regard would be clearly applicable. It was further held that such decision which has been taken by the authority u/s 220(2A) can be subjected to judicial review by filing a petition under Article 226 of the Constitution of India.

23. A Division Bench of the Kerala High Court in G.T.N. Textiles Ltd. Vs. Deputy Commissioner of Income Tax and Another, held that it is a condition precedent that all the three conditions laid down in section 220(2A) should be satisfied for

getting a relief of waiver.

24. The Hon''ble Supreme Court in Carborundum Universal Ltd. v. CBDT [1989] 47 Taxman 156 while analysing the scope of section 220(2A) held that when a statutory provision does not exclude natural justice, the requirement of affording an opportunity of being heard can be assumed, particularly when the proceedings are quasi-judicial.

25. A Division Bench of the instant Court in Auro Food Ltd. v. CIT [2006] 153 Taxman 216 was considering the aspect as regards the manner in which the power is to be exercised u/s 220(2A) of the Act. By placing reliance upon the decision of the Kerala High Court (supra), the Hon''ble Division Bench held that whenever an application is filed seeking waiver of interest, it is incumbent on the part of the quasi-judicial authority to record reasons in that order. While reiterating such principles, the Hon''ble Division Bench of the instant Court in the cases of Kanchipuram Silk Handloom Weavers'' Co-operative Marketing Society Ltd. and M. Ganesan (supra), had directed the matter to be considered afresh since reasons have not been recorded.

26. The legal position as regards the scope and power u/s 220(2A) having been analysed as above, if the impugned order is perused, it reveals that the respondent after narrating the facts of the matter, has stated that a perusal of the records and, in particular, the tax recovery officers report, dated 27-7-2005, show that the assessee has not honoured the instalment payment provided by the Joint Commissioner of Income- tax, the assessee has not co-operated in the payment of instalment granted and, thus, one of the conditions stipulated in clause (iii) of section 220(2A) has not been fulfilled. Therefore, waiver application is rejected.

27. The learned counsel appearing for the petitioner would submit that due to genuine hardship and reason beyond the control of the petitioner, the tax could not be remitted. He would further submit that the fact that the instalment was granted to the petitioner himself would establish that the department was prima facie satisfied that the petitioner was going through genuine hardship and that the default in payment of the amount of income tax was due to circumstances beyond the control. The learned counsel would further submit that the assessee had co-operated in the enquiry which had only resulted in the block assessment order being passed on 31-3-1999. Therefore, the learned counsel would submit that the petitioner had satisfied all the three conditions under the Statute.

28. The learned Senior Standing Counsel for the department, on the other hand, had contended that the petitioner is a resourceful person and he had not honoured the indulgence given by the department and protracted the matter by filing appeal before the Commissioner, further appeal to the Tribunal and thereafter defaulted in instalments and also did not comply with the indulgence granted by the Chief Commissioner of income tax and, therefore, he is not entitled to any relief.

29. As regards the circular of the Central Board of Direct Taxes dated 21-5-1996, relied upon by the petitioner, I am inclined to accept the submission of the learned Senior Standing Counsel for the Department, since the said circular relating to waiver or rejection of interest is in respect of one under sections 234A, 234B and 234C of the income tax Act and cannot be applicable to the case of the petitioner.

30. As held by the instant Court in P. Ramasamy''s case (supra) pursuit of remedies available to the assessee under the Act cannot be construed as non-co-operation. The petitioner is entitled to file such remedy of appeal and further appeal to Tribunal and also invoke the powers of the Chief Commissioner for necessary reliefs. Therefore, this contention of the department has to be rejected.

31. In view of the law laid down by the Hon''ble Supreme Court as well as by the instant Court as cited supra, the respondent is bound to record reasons while passing an order, since the power exercised by the respondent is a quasi-judicial power. A perusal of the impugned order does not reveal any cogent reason for rejecting the request of the petitioner.

32. The Hon''ble Supreme Court in S.N. Mukherjee Vs. Union of India, has observed as follows:

In view of the expanding horizon of the principles of natural justice, the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the Legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect. Such an exclusion can also arise by necessary implication from the nature of the subject-matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case. Therefore, except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision. The recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and assure a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. Therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It is however not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge." (p. 1984)

33. Thus, in terms of the law laid down in the judgments referred supra, the respondent is bound to consider the petition, as to whether the petitioner fulfilled all the three conditions laid down u/s 220(2A) and record reasons as to how the petitioner is not entitled to the waiver of penal interest. The impugned order does not satisfy the tests laid down by the Hon''ble Supreme Court and the instant Court, as referred supra and, therefore, the impugned order deserves interference. For the foregoing reasons, the impugned order is liable to be set aside and, accordingly, it is set aside. The respondent is directed to consider the claim of the assessee with regard to waiver of interest afresh and pass a considered order after giving sufficient opportunity to the petitioner in accordance with law, within a period of two months from the date of receipt of a copy of this order. It is needless to state that the petitioner shall co-operate in the hearing, so afforded by the respondent. In the result, the writ petition is allowed. Consequently the connected miscellaneous petition is closed.

