(1999) 01 KL CK 0022

In the High Court Of Kerala

Case No : O.P. No. 11646 of 1991-J and O.P. No. 11649 of 1991

Manuel Sons Wines APPELLANT

Vs

Income Tax Officer and Others RESPONDENT

Date of Decision : 13-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 215, 217
Income Tax Rules, 1962 — Rule 40, 40(5)

Citation : (1999) 155 CTR 137 : (1999) 236 ITR 909 : (1999) 104 TAXMAN 27

Hon'ble Judges : A.S. Venkatachala Moorthy, J

Bench : Single Bench

Advocate : P. Balachandran, for the Appellant; P.K.R. Menon, Senior Advocate, for the Respondent

Judgement

A.S. Venkatachala Moorthy, J.—In both the original petitions, the grievance of the petitioners is "that the respondents, namely, the Income Tax authorities, have only granted waiver of interest to the extent of 50 per cent, and not its entirety. The case of the petitioners is that once the authorities come to the conclusion that the petitioners could not have anticipated the additions in the respective cases they ought to have granted relief in its entirety.

2. Heard learned counsel for the petitioner in both the cases as also learned counsel for the respondents.

3. Rule 40(5) of the Income Tax Rules, 1962, is to the effect that the Income Tax Officer may reduce or waive the interest payable u/s 215 or Section 217 in the cases and under the circumstances when the Inspecting Assistant Commissioner considers that the circumstances are such that a reduction or waiver of the interest payable u/s 215 or Section 217 is justified.

4. The Deputy Commissioner of Income Tax, Central Range, Ernakulam, after considering the entire matter came to the conclusion that the assessee could not have anticipated the addition to the extent to which the same was enhanced and

in the facts and circumstances of the case he came to the conclusion that partial waiver would meet the ends of justice. The Deputy Commissioner has passed a reasoned order. Against this order the petitioners filed revision petitions before the Commissioner of Income Tax. The Commissioner has also passed a reasoned order after considering the entire matter in detail. It is for the authorities to decide to what extent the waiver has to be given, depending upon the facts and circumstances of each case. No hard and fast rule can be made in this regard. As mentioned earlier, the Deputy Commissioner of Income Tax as also the Commissioner of Income Tax examined the matter in detail and has waived interest only to the extent of 50 per cent. This court, while exercising the jurisdiction under article 226 of the Constitution of India, cannot interfere with the matter unless there is non-application of mind by the authorities concerned. But, as far as the present case is concerned, both the authorities have considered the matter in detail and have given waiver of interest to the extent of 50 per cent.

5. There are no merits in both the original petitions and they are dismissed.

