(2012) 01 KL CK 0007

In the High Court Of Kerala

Case No : Writ Petition No. 1595 of 2012

Shahina Babu — APPELLANT

Vs

Chief CIT and Others — RESPONDENT

Date of Decision : 19-01-2012

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

Citation : (2012) 01 KL CK 0007

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : D. Kishore and Smt. Mini Gopinath, for the Appellant; P.K.R. Menon and Jose Joseph, for the Respondent

Judgement

1. Petitioner made an application seeking waiver of interest as provided u/s 220(2A) of the IT Act (in short the Act). That application was considered and by Ext. P8 order, waiver to the extent of 50 per cent of the interest due, has been granted. It is complaining denial of waiver to the extent of as sought for, this writ petition has been filed. Heard the learned counsel appearing for the petitioner who mainly contends that although the petitioner has satisfied the three conditions laid down in section 220(2A) of the Act, the CIT has acted illegally in denying full benefits. However, having gone through Ext. P8 order and the provisions contained in section 220 (2A), I am unable to find any illegality in Ext. P8.

2. Section 220 (2A) of the Act reads thus :

220(2A). Notwithstanding anything contained in sub-s. (2), the Chief CIT or CIT 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.

3. In G.T.N. Textiles Ltd. Vs. Deputy Commissioner of Income Tax and Another, and Dr. K. Parameswaran Nair Vs. Assistant Commissioner of Income Tax and Another, , relied on by the learned counsel for the Revenue, it has already been held that all the three conditions contained in s. 220(2A) are to be satisfied by an assessee to claim the benefit of the waiver. In this case, the contention of the petitioner for waiver has been considered and the first respondent has held as follows :

I have carefully considered the application for waiver of interest under s. 220(2). The assessees legal heir has co-operated with the Department in completion of the assessment and in recovery of the demand. It is also seen that the default in payment of tax on which interest u/s 220(2) was charged was due to liquidity problem as the legal heir did not have a regular source of income to cover all the liabilities including upkeep and maintenance of the family. At the same time it is noticed that per the records, the petitioners husband, the deceased assessee, had acquired many immovable properties in names of himself, his wife the petitioner and in their joint names. Further, as per the lease deed executed by the petitioner on 15-5-2008, the office premises in Panampilly Nagar, Ernakulam are let out to Jain Housing & Construction Ltd., for a monthly rent of Rs. 60,000 with effect from 15-6-2008, liable to be increased by 5 per cent at the end of every 11th month.

On a careful consideration of all the facts and circumstances of the case, I am of the opinion that the payment of the entire interest u/s 220(2) would cause some genuine hardship. However, the applicant does not qualify for full waiver of the interest charged for the belated payment of the demand. Hence interest chargeable u/s 220(2) is ordered to be reduced by 50 per cent.

4. A reading of this order shows that the CIT has found the petitioner eligible for the benefit of section 220(2A) of the Act and having regard to the fact that the petitioner has various assets in her name and also has many income there from, the CIT was not satisfied that the petitioner was eligible for the full waiver. Such exercise of discretionary power of the CIT cannot be said to be perverse warranting interference in a proceeding under Art. 226 of the Constitution of India. Therefore, the prayer to interfere with Ext. P8 has to be rejected and I do so. Although I uphold Ext. P8, petitioner seeks an installment facility to discharge the liability. Heard the learned standing counsel on this aspect also. Taking note of the submissions, I direct that the amount due from the petitioner by way of interest shall be permitted to be paid in five equal monthly installments, first of which shall be paid on or before 15-2-2012 and the remaining installments will be paid on or before 15th of every succeeding month. Needless to say that in

case default is committed in any one of the installments, bank will be free to take action for recovery of the amount, in accordance with law.

Writ petition is disposed of as above.

