

(2014) 10 MAD CK 0189

In the Madras High Court

Case No : Writ Petition No. 8604 of 2014

Vaata Infra Ltd.

APPELLANT

Vs

The Income Tax Officer

RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 143(3), 147, 148, 154

Citation : (2014) 10 MAD CK 0189

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

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—The petitioner a company engaged in the business of manufacturing, commissioning, operating and maintenance of Wind Mills and generation and distribution of power there from, has filed this Writ Petition for issuance of a Writ of Certiorarified Mandamus, to quash the proceedings of the respondent dated 12.06.2012 under Section 220(2) of the Income Tax Act, 1961 (the Act).

2. The impugned proceedings states that while giving effect to the order of the Income Tax Settlement Commission, Chennai, (Settlement Commission) the demand of Rs. 23,16,31,123/- raised vide order dated 31.03.2006, was reduced to Rs. 4,72,72,689/- and that from the verification of records, it was found that the demand has been paid on various dates and was fully paid in July 2007 and the interest payable under Section 220(2) of the Act for the delayed payment of tax works out to Rs. 73,43,132/- and this demand may be paid immediately.

3. The assessment relates to the year 2001-02. The respondent passed an order of assessment dated 31.03.2006 under Section 143(3) read with Section 147 of the Income Tax Act and quantified the tax, surcharge and interest under Sections 234A(3), 234B(3) and 234C being a total amount of Rs. 23,16,31,123/-. The petitioner filed an application before the Settlement Commission on 15.05.2006. The Settlement Commission by order dated 15.05.2006, accepted the revised offer of additional undisclosed income of Rs. 3,34,28,41,978/-, vide letter dated

05.03.2008, with reference to the assessment years 1998-99 to 2003-04 as per the annexure to the said order. The Settlement Commission further directed, the Commissioner of Income Tax to compute the total income, income tax, interest and penalty, if any, payable as per the order of the Settlement Commission and communicate to the petitioner immediately along with demand notice and challan. The petitioner was directed to pay the taxes within thirty five days of the receipt of the demand notice. On a prayer made by the petitioner, they were permitted to pay the tax liability in four quarterly instalments beginning from 30.04.2008 and furnish proof of tax payable to the Settlement Commission and the Assessing Authority within ten days of making the payment. Further, it was directed that if the tax is not paid within the due date, the tax along with interest under Section 245D(6) of the Act shall be recovered. Consequent to the order passed by the Settlement Commission, the income tax payable was computed and a demand notice dated 31.03.2008, was issued to the petitioner calling upon the petitioner to pay Rs. 2,24,74,375/-. This was followed by a notice of demand under Section 156 of the Income Tax Act. Subsequently, by another proceedings dated 30.06.2008, the petitioner was intimated that while passing orders on 31.03.2008, the tax paid by the petitioner to the extent of Rs. 46.30 lakhs was omitted to be given credit and hence, the order dated 31.03.2008, was revised and the amount payable was computed as Rs. 17,82,437/-. Further, the order dated 30.06.2008, was modified by order dated 20.07.2009, wherein it was stated that the petitioner is eligible for total refund of Rs. 19,52,311/- and this will be adjusted against the arrears of assessment years 1998-99, 1999-2000 and 2004-05. Subsequently, the impugned proceedings dated 12.06.2012, was passed calling upon the petitioner to pay interest under Section 220(2) of the Income Tax Act to the tune of Rs. 73,43,132/-. The petitioner submitted a representation dated 18.06.2012, stating that the tax liability has been fully paid and there is no demand which was payable and hence interest under Section 220 of the Income Tax Act, does not arise and requested to pass necessary orders to nullify/rectify the demand as "nil". Further, the petitioner requested to process the refunds and issue the same together with applicable interest pointing out that the petitioner has been facing severe financial crunch and income tax has been paid with great difficulty by disposing of the assets/borrowings. Thereafter, the petitioner filed W.P.No. 27071 of 2012, praying for issuance of a Writ of Mandamus, to implement the order dated 24.03.2008, passed by the Settlement Commission and grant refund of tax as detailed in the representation dated 04.08.2009. In the affidavit filed in support of the said writ petition, it was stated that notwithstanding the facts, the respondent raised demand notice under Section 220 of the Income Tax Act dated 12.06.2012, (impugned order in this writ petition) and the petitioner was forced to once again clarify all points repeatedly and inspite of the same, the respondent has not acted as per the directions of the Settlement Commission, whose orders are final and binding and no refund has been granted and therefore, the petitioner has approached this Court for the said relief.

4. In the counter affidavit filed by the respondent in the said Writ Petition, it was submitted that the business loss eligible to be carried forward for the preceding eight assessment years has been arrived at and duly set off in accordance with the provisions of the Income Tax Act. Petitioner's petitions for rectifications in various years have been considered and after giving effect to the order of the Hon'ble ITSC, refunds in respect of Assessment years 2000-2001 and 2001-02 amounting to Rs. 22,52,311/- has been adjusted against the demand payable by the petitioner. Further, the refunds due to the petitioner for the assessment years 2008-09 and 2011-12 for a sum of Rs. 49,53,180/- have also been adjusted against the demand payable by the petitioner for assessment year 2009-10 and earlier years. The petitioner's contention of further refunds, if any, needs to be reconciled and worked out after due consideration of pending proceedings and adjustments as assessee's issues cover a period of 10 years from assessment year 2000-01 to 2009-10. Even otherwise, after reconciling all such TDS claims/rectifications the same is to be adjusted against the pending demand of Rs. 3,27,18,094/- as per the due procedure and process of the law enshrined in I.T., Act. Further, loss of about 31.06 crores including those carried forward by these two years has been allowed to be carried forward and same is set off against the business income for 2009-10. Hence, department has duly discharged its august duty with due diligence considering huge quantum of pending demand.

5. Though the respondent Department took the above stand in the counter affidavit, the learned Senior counsel for the petitioner submitted that no such order has been communicated to the petitioner by the respondent. In such view of the matter, this Court by order dated 11.12.2012, directed the respondents to pass a speaking order and communicate the same to the petitioner so as to enable it to work out the remedy in accordance with law, a time frame of twelve weeks was stipulated. Pursuant there to, an order dated 06.02.2013, was issued to the petitioner stating that the order of the Settlement Commission pertains to the assessment years 1998-99 to 2003-04 and on giving effect to the same, the total demand has reduced/or resulted in refunds and the same was mentioned in annexure ?A? enclosed along with the order. Further, it was stated that the status of demand or refund in respect of subsequent assessment years were furnished in annexure ?B? enclosed along with the order. Further, the petitioner was informed that in case if any further clarification is needed, the petitioner may approach the respondent independently for each assessment year. That after adjustment of the refund, there is a pending demand of Rs. 2,43,14,969/- in the assessment year 2009-10 and demand under Section 220(2) of Rs. 73,43,132/-, in assessment year 2001-02. Further, the petitioner was informed that the refunds pertaining to the assessment years 2005-06 and 2006-07, can be determined and issued on completion of the proceedings, which are pending and stayed by this Court. By subsequent communication dated 27.02.2013, the respondent furnished the details with regards to the amount payable/refundable to the petitioner for the assessment years 1998-99 to 2010-11 and the said

communication contained two annexures giving the details. Thereafter, the petitioner submitted a representation dated 04.03.2013, stating that the order passed under Section 220 is clearly in contravention of the provisions of the Income Tax Act and derides the power of the Settlement Commission by reopening matters already settled by it and the order under Section 220, is attempted to bye-pass the settlement order and the subsequent order of the Commissioner and therefore, does not confirm to law. This was followed by another representation dated 08.03.2013. In the present Writ Petition, the challenge is to the demand of interest under Section 220(2) of the Income Tax Act.

6. The learned counsel for the petitioner after elaborately referring to the factual position and referring to the relevant portion of the order passed by the Settlement Commission submitted that the provision of Section 220(2) of the Income Tax Act, would not stand attracted to the facts of the petitioner's case, since the respondent themselves admitted that the demand raised has been paid on various dates on or before 31.07.2007 and the consequential demand raised pursuant to the order passed by the Commission, was made only on 31.03.2008 and the remittance having been effected by the petitioner eight months prior to the order of assessment, there is no delay in remittance and no interest is leviable. Further, it is submitted that the order of assessment having telescoped into the order of settlement, a notice of demand under Section 156 of the Income Tax Act was issued on 31.03.2008 and thus, the notice of demand/order of assessment dated 31.03.2006, thus cease to be operative, as there can be only one legal enforceable demand in respect of an assessment. Further, it is submitted that in terms of Section 245D(4) of the Act, the order of the Settlement Commission is a consolidated order that addresses the total remittance to be effected by the petitioner on account of tax, interest and penalty and therefore, no further levies are envisaged in the light of Section 245(6A) of the Act. In any event, the impugned order purporting to raise a demand over and above the demand directed to be made by the Settlement Commission is an obvious of jurisdiction. Further, it is reiterated that the disputed demand having been paid before 31.07.2007 itself, which has been admitted by the respondent, the question of demanding interest will not arise. Further, it is submitted that the Income Tax Act provides for remedy by way of waiver of interest in terms of Section 220(2) of the Income Tax Act. However, the same would be efficacious remedy only in the event of the levy being in accordance with law and in the instant case, when Section 220(2) of the Income Tax Act itself is not applicable to the petitioner, the question availing remedy under the Act does not arise. On the above grounds, the learned counsel appearing for the petitioner seeks for setting aside the impugned proceedings.

7. The learned Standing counsel for the respondent after referring to the order passed by the Settlement Commission submitted that the order dated 31.03.2008, is an order consequent to the order of the Settlement Commission computing the income tax payable as per the direction and the interest

demand in the impugned order is for the period from 01.04.2006 to July 2007 and not for any subsequent period or anterior period. Further, it is submitted that in terms of the direction issued by this Court in the earlier Writ Petition, a speaking order was passed by the respondent dated 06.02.2013 and all the details were furnished in the form of annexures, which was also once again communicated by order dated 27.02.2013 and the details in respect of each of the assessment years were furnished in the form of an annexure and in a tabulated statement, the details for each assessment year was furnished, namely, the total demand before the order of Settlement Commission; demand or refund after giving effect to order of Settlement Commission; demand or refund arising out of subsequent modification orders; and remarks in respect of each assessment year. Further, it is submitted that if the petitioner is aggrieved by the impugned order, the petitioner ought to have availed the remedy under Section 264 of the Income Tax Act and without availing the same, the Writ Petition is not maintainable. On the above submissions, the learned counsel seeks to sustain the impugned proceedings.

8. In reply, the learned counsel appearing for the petitioner submitted that the time starts to run once a notice under Section 156 is being issued and the learned counsel reiterated that the department themselves have accepted that the payments have been effected as of July 2007 and therefore, the question of levy of interest does not arise under Section 220(2) of the Income Tax Act.

9. Heard the learned counsel appearing on either side and perused the materials placed on record.

10. The challenge in this writ petition is to an order dated 12.06.2012, by which the respondent has demanded interest under Section 220(2) of the Income Tax Act for delayed payment of tax. Sub-section (2) of Section 220 of the Act states that if the amount specified in any notice of demand under Section 156 is not paid within the period limited under sub-section (1) of Section 220, the assessee shall be liable to pay simple interest for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section(1) and ending with the day on which the amount is paid. The first proviso under sub-section (2) of Section 220 states that where as a result of an order under Section 154 or 155 or 250 or 254 or 260 or 262 or 264 or an order of the Settlement Commission under sub-Section (4) of Section 245D, the amount on which interest was payable under Section 220(2) had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded. The second proviso states that in respect of any period commencing on or before the 31st day of March, 1989, and ending after that date, such interest shall, in respect of so much of such period as falls after that date, be calculated at the rate of one and one-half per cent of every month or part thereof. In terms of Section 220, an assessee will be treated as an assessee in default when he does not pay the tax liability in respect of a demand raised by an demand notice under Section 156. There is a difference between the

interest payable under Section 220 and the interest payable under Section 234B, which deals with interest for defaults in payment of advance tax, as the interest under Section 220 continuous still all the outstanding demand including the interest is cleared, while Section 234B would be chargeable for short-fall in the payment of advance tax till the date of regular assessment. Therefore, the date of intimation under Section 143(1) of the Act would be relevant for the purpose of interest under Section 220 of the Act. It has been held that the rationale behind the provisions of Section 220 of the Act to levy interest on delayed payment of tax is not to penalise the party but to make a provision for compensation for the department on the failure of the assessee to make payment on the first notice of demand *Vikrant Tyres Ltd. Vs. First Income Tax Officer*, . Therefore, unless there is a default in payment of outstanding tax, the question of levy of interest would not arise.

11. An order of assessment was passed on 31.03.2006 for the assessment year 2001-02 under Section 143(3) read with Section 147 of the Income Tax Act. Against the said order of assessment, the petitioner preferred an application before the Settlement Commission for settlement of their case under Section 245C(1) of the Income Tax Act. The Settlement Commission by order dated 18.03.2008, settled the issue by accepting the revised offer of additional undisclosed income of Rs. 3,34,28,41,978/-, by letter dated 05.03.2008, with reference to the assessment years 1998-99 to 2003-04. The Settlement Commission further directed that in view of the statutory time limit prescribed under Section 245D(4A) of the Act and the direction of this Court to dispose of the application before 31.03.2008, the Settlement Commission directed the Commissioner of Income Tax to compute the total income, income tax, interest and penalty, if any, payable as per the order of the Commission and communicate to the applicant immediately along with the demand notice and challan under intimation to the Commission. Consequent to the order passed by the Commissioner, the Assistant Commissioner of Income Tax Company Circle III(3), Chennai passed an order dated 31.03.2008, computing the income payable and directed the petitioner to pay the said amount as per the demand notice. This was followed by a notice of demand dated 31.03.2008, under Section 156 of the Act, notice of demand dated 31.03.2008 was revised by subsequent order dated 30.06.2008 and further revised by order dated 20.07.2009. It is thereafter the impugned communication dated 12.06.2012 was sent to the petitioner demanding interest under Section 220(2) of the Act. The petitioner submitted a representation on 18.06.2012, requesting to process the application for refund and issue the same together with applicable interest. Further, it was stated that the tax liability has been fully paid and there is no demand which was payable and hence the interest under Section 220 does not arise and requested the respondent to pass necessary orders to nullify/rectify the demand. The petitioner filed a Writ Petition before this Court in W.P.No. 27071 of 2012, praying for a direction upon the respondents to implement the order dated 24.03.2008, passed by the Settlement Commission and grant refund of tax as detailed in the

representation dated 04.08.2009.

12. The learned counsel appearing for the petitioner pointed out that one of the grounds raised in the Writ Petition is by stating that inspite of the petitioner placing all the facts and the Settlement Commission having finally settled the case, yet the respondent raised a demand under Section 220 of the Income Tax Act. The petitioner also filed another Writ Petition in W.P.No. 27007 of 2012, challenging the notice dated 05.03.2012, insofar as it calls upon the petitioner to show cause as to why the proceedings under Section 148 of the Income Tax Act should not be initiated and consequently, to direct the respondent to implement the order of the Settlement Commission. However, the copy of the order passed in W.P.No. 27007 of 2012, has not been produced before this Court.

13. Be that as it may, though the petitioner in W.P.No. 27071 of 2012, sought for a mandamus to implement the order of the Settlement Commission and grant refund, the petitioner restricted the prayer sought for in the Writ Petition and requested this Court to direct the respondents to pass a speaking order and communicate the same to the petitioner so as to enable them to work out their remedies in accordance with law. This Court recording the statement on behalf of the petitioner disposed of the Writ Petition by order dated 11.12.2012, which reads as follows:-

The petitioner seeks a writ of Mandamus to direct the respondent to implement the order dated 24.3.2008 passed by the Income Tax Settlement Commissioner, Additional Bench in Settlement Application No. TN/CN 1/06-07/13/IT, dated 24.3.2008 and grant refund of tax as detailed in the representation dated 4.8.2009 filed by the petitioner.

2. On notice, Mr. Pramod Kumar Chopda, learned Senior Standing counsel for the respondents informs the Court that the case of the petitioner was considered and refund was ordered, however the amount which has to be refunded has been adjusted towards tax liability. The manner in which the tax was adjusted has been set out in paragraph (3) of the counter affidavit, which reads as follows:

"3) It is submitted that business loss eligible to be carried forward for the preceding eight assessment years has been arrived at and duly set off in accordance with the provisions of the IT Act. Petitioner's petitions for rectifications in various years have been considered and after giving effect to the order of the Hon''ble ITSC, refunds in respect of Asst. Years 2000-2001 and 2001-02 amounting to Rs. 22,52,311/- has been adjusted against the demand payable by the petitioner. Further, the refunds due to the petitioner for the asst. years 2008-09 and 2011-12 for a sum of Rs. 49,53,180/- have also been adjusted against the demand payable by the petitioner for AY 2009-10 and earlier years. The petitioner's contention of further refunds, if any, needs to be reconciled and worked out after due consideration of pending proceedings and adjustments as assessee's issues cover a period of 10 years from A.Y.2000-01 to 2009-10. Even otherwise, after reconciling all such TDS claims/rectifications the

same is to be adjusted against the pending demand of Rs. 3,27,18,094/- as per the due procedure and process of the law enshrined in I.T. Act. Further loss of about 31.06 crores including those carried forward by these two years has been allowed to be carried forward and same is set off against the business income for 2009-10. Hence department has duly discharged its august duty with due diligence considering huge quantum of pending demand."

3. However, the learned Senior Counsel for the petitioner pleads that no such order has been communicated to the petitioner by the respondents.

4. In such view of the matter, the respondents are directed to pass a speaking order and communicate the same to the petitioner, so as to enable it to workout the remedy in accordance with law. Such exercise shall be completed by the respondents within a period of twelve weeks. This writ petition is disposed of accordingly. No costs.

14. Thus, it appears that when a counter affidavit was filed in the earlier Writ Petition by the respondent setting out the details, the petitioner though fit to restrict the relief sought for in the Writ Petition and requested the respondent to communicate a speaking order to them so as to enable them to work out their remedies in accordance with law.

15. It is to be noted that even as on the date, when W.P.No. 27071 of 2012, was filed before this Court on 28th September 2012, the impugned order in this Writ Petition dated 12.06.2012, demanding interest under Section 220 of the Income Tax Act was communicated to the petitioner and well within the knowledge of the petitioner, yet the petitioner did not choose to challenge the impugned order dated 12.06.2012, in the earlier Writ Petition. Though, it is contended by the learned counsel for the petitioner that the demand of interest was in fact contested by raising it as one of the grounds in the Writ Petition, the petitioner did not canvass the contention in the earlier writ petition and restricted the relief based on which the Writ Petition was disposed of by the aforementioned order. Pursuant to the direction issued by this Court in the earlier Writ Petition dated 11.12.2012, the respondent passed an order dated 06.02.2013, which reads as follows:-

PAN.AACW2681A/Co.Ward III(1)/2012-13 Date 06.02.2013

To The Principal Officer, M/s.Wescare (India) Ltd., No. 16, Cenotaph Road, Teynampet, Chennai ? 18.

Sir/Madam, Sub:

Your plea before Hon''ble High Court to implement the Order passed by Hon''ble Settlement Commission & consequent request to grant refund for the relevant years involved ? Reg.

Ref: Order of the Hon''ble High Court of Madras, dated 11.12.2012 in W.P.No. 27071 of 2012.

Please refer to the above

The Hon''ble High Court of Madras has disposed your petition by directing this office to give a speaking communication to your good selves with regard to the relevant subject of giving effect to Settlement Commission order and issue of consequent refunds.

The relevant Income Tax Settlement Commission order pertains to Assessment Year 1998-99 to 2003-04 and on giving effect to the same the total demand has reduced/ (or) resulted in refunds and the same is as per annexure "A" enclosed.

The status of demand or refund in respect of subsequent assessment years is also detailed in the annexure "B" enclosed. In case, if any further clarification is needed you may approach the undersigned independently for each assessment year. It may be seen that after issue/adjustment of refunds, there is a pending demand of Rs. 2,43,14,969/- in assessment year 2009-10 and demand under Section 220(2) of Rs. 73,43,132/- in assessment year 2001-02. The refunds pertaining to assessment year 2005-06 & 2006-07 can be determined and issued on completion of proceedings which have presently been stayed by the Hon''ble High Court.

Yours faithfully (Aarthi Srinivasan) Income Tax Officer Company Ward III(1), Chennai.

16. Thereafter, the petitioner made another representation dated 19.02.2013, requesting for copies of the documents and the same was communicated to the petitioner by proceedings dated 27.02.2013, giving the details in respect of each of the assessment years from the assessment year 1998-99 onwards.

17. In such circumstances, it is to be noted that the respondent has complied with the directions issued by this Court in the earlier writ petition by passing a speaking order and communicating the same to the petitioner. Further information sought for by the petitioner with regard to the various assessment orders passed for each of the assessment years was also communicated by letter dated 27.02.2013. Along with the said letter, two annexures were appended as annexures A and B in which a tabulated statement was given mentioning the assessment year the total demand before the order of the Settlement Commission; demand or refund after giving effect to the order of the Settlement Commission; demand or refund arising out of subsequent modification orders and remarks in respect of each of the assessment years. Therefore, the necessary details have been communicated to the petitioner. If the petitioner is aggrieved then the petitioner has to work out the remedy in accordance with law. In fact, such liberty was reserved to the petitioner when the earlier Writ Petition was disposed of by order dated 11.12.2012.

18. It is submitted by the learned Standing Counsel for the Department that the interest, which is now demanded, is for the period from 01.04.2006 to July 2007.

In fact, the Settlement Commission while passing the order dated 18.03.2008, settled the case of the petitioner and specifically directed the Commissioner of Income Tax to compute the total income, income tax, interest and penalty, if any payable. The contention of the petitioner is that the respondent have admitted in the impugned communication that the demand has been paid on various dates and was fully paid in July 2007, therefore, the question of demanding interest does not arise.

19. As pointed out in the case of Vikrant Tyres Ltd., Vs ITO, (supra), the condition precedent under Section 220 is that there should be a demand notice and there should be a default in paying the amount so demanded within the time stipulated in the notice. It is not the case of the petitioner that the tax payable was paid without any default. The contention of the petitioner is that the tax liability was paid well before 31.07.2007 and the demand having been issued on 21.03.2008, the levy of interest under Section 220(2) of the Act is not in accordance with law. It is to be noted that the communication dated 31.03.2008, is a consequence to the order passed by the Settlement Commission dated 18.03.2008. Therefore, the interpretation given by the petitioner for computation of the period for the purpose of levy of interest cannot be adjudicated in a Writ Petition and the petitioner has to necessarily avail the remedy available under the Act.

20. Section 264 of the Act provides for revision of other years other than an order to which Section 263 of the Act applies, by an authority subordinate to the Commissioner and the Commissioner either on his own motion or on application by the assessee for revision, call for the records of any proceedings under the act in which any such order has been passed and may make such enquiry or cause such enquiry to be meant and subject to the provisions of the Act pass such orders thereon not being an order prejudicial to the assessee.

21. In terms of sub-section (3) of Section 264 of the Act, in the case an Application for refund by the assessee, the Application must be made within one year from date on which the order in question was communicated to the assessee or the date on which he otherwise came to know of it, whichever is earlier. The proviso under Sub-section (3) of 264 of the Act gives powers to the Commissioner to admit an Application after the expiry of the period of one year on the assessee saying that it was presented by sufficient cause from making the Application within the period stipulated.

22. Sub-section (4) of section 264 of the Act, enumerates the cases in which the Commissioner shall not revise any order in exercise of the powers under Section 264 of the Act. Admittedly, the petitioner's case does not fall within any of the three clauses viz. clauses (a), (b) & (c) of Section 264(4) of the Act. That apart, it has to be pointed out that the petitioner does not seek to challenge the order passed by the Settlement Commission, but the challenge is essentially to the demand of interest broadly on three grounds.

23. Firstly by contending that the respondents themselves having stated that from the verification of records though the tax due has been fully paid in July, 2007, interest under section 220(2) of Act cannot be demanded. The second ground being that the demand under Section 156 of the Act, consequent upon the order of the Settlement Commission has been raised only on 31.03.2008 and remittance of the amount has been effected in advance and Section 220(2) of the Act would not be attracted. Thirdly, that the direction issued in the earlier Writ Petition in W.P.No. 2709 of 2012 has not been complied with, wherein a direction was issued by this Court to the respondent to pass a speaking order and communicate the same to the petitioner so as to enable the petitioner to work out the remedy in accordance with law.

24. In the preceding paragraphs it has been held that the order and direction issued by this Court has been complied with and details were furnished and clarification sought for by the petitioner was also replied. Therefore, on the said ground, the impugned order cannot be put to challenge. The other two grounds of challenge are not pure questions of law but mixed questions of fact and law, which cannot be adjudicated in a Writ Petition. The consistent plea of the Department is that the interest is for the period of default which is from 01.04.2006 to July 2007 and not for any subsequent or anterior period. Thus, those two issues have to be thrashed out by the petitioner by exhausting the remedy available under the provisions of the Act, which is available under Section 264 of the Act.

25. In the result, the Writ Petition is disposed of by directing the petitioner to file a Revision before the Commissioner of Income Tax under Section 264 of the Act, within a period of three weeks from the date of receipt of a copy of this order and if such Revision is filed, the Revisional Authority shall entertain the Revision Petition, without rejecting the same on the ground of limitation and consider the same on merits and in accordance with law, without in any manner being influenced by any observation contained in this order and pass appropriate orders as expeditiously as possible. No costs.