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In the High Court Of Kerala

Case No : O.P. No. 18677 of 1999

V.N. Parameswaran and Another — APPELLANT

Vs

Income Tax Officer and Another — RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:
Income Tax Act, 1961 — Section 119(2), 140A, 199(2)(b), 234A, 234B

Citation : (2013) 356 ITR 348

Hon'ble Judges : B.P. Ray, J

Bench : Single Bench

Advocate : P. Balachandran, for the Appellant; P.K.R. Menon, Senior Standing Counsel, George K. George and Jose Joseph for the Income-Tax, for the Respondent

Final Decision : Disposed Off

Judgement

B.P. Ray, J.—The petitioners were the owners of the VVP High School, Palakkad. The petitioners challenge exhibits P8 and P9 orders of the second respondent rejecting the petitions for waiver of interest under sections 234A, 234B and 234C of the income tax Act, 1961, and exhibit P6 order issued by the Commissioner of income tax refusing to condone the delay in filing of the returns for the years 1990-91 to 1992-93. It is submitted that the second petitioner, the mother of the first petitioner, expired on September 24, 1998. Prayers in this original petition are as follows:--

(a) to issue a writ of certiorari or any other appropriate writ, order, or direction to quash exhibits P6 order and also that part of exhibits P8 and P9 orders refusing to grant waiver of interest for the assessment years 1990-91, 1991-92, 1992-93 and 1994-95.

(b) to issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents herein to waiver the interest paid under sections 234A, 234B and 234C for the above assessment years;

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(c) to issue directions to the respondents herein to refund/adjust the interest paid under sections 234A, 234B and 234C for the assessment years 1990-91 to 1992-93 and 1994-95.

2. According to learned counsel for the petitioners, the first respondent ought to have condoned the delay in filing of the returns of income for the assessment years 1990-91 to 1992-93 on the basis of the Board''s Circular No. 670, dated October 26, 1993, and on that basis the second respondent ought to have waived the interest under sections 234A, 234B and 234C for the assessment years 1990-91 to 1992-93. Moreover, the sum of Rs. 8,20,600 was paid to the petitioners by the Government only on March 19, 1994, and as such the petitioners could not effect the payment relating to the assessment year 1994-95 as advance tax, as the last instalment for payment of advance tax as per the provisions of the Act is 15th March and, therefore, the second respondent ought to have waived the interest for the assessment year 1994-95 also. Therefore, the petitioners are eligible for the waiver of interest under sections 234A, 234B and 234C for the assessment years 1990-91 to 1992-93 and for 1994-95 also. Therefore, the petitioners are also eligible for the interest u/s 244A of the Act.

3. The relevant portion of Circular No. 670, dated October 26, 1993, is quoted below for ready reference (see [1993] 204 ITR (St.) 154):

2. Board have also decided that in such cases:--

(i) where the refund does not exceed Rs. 10,000 for any assessment year the Assessing Officer shall obtain the prior approval of the CIT before entertaining a belated refund claim; and

(ii) where the refund exceeds Rs. 10,000 but does not exceed Rs. 1,00,000 for any assessment year the Assessing Officer shall obtain the prior approval of the Chief CIT or the Director General of income tax before entertaining a belated refund claim.

3. The Chief CIT/Director General of income tax/CIT, as the case may be, shall ensure that the conditions laid down under the Board''s order u/s 199(2)(b) referred to above are fulfilled.

4. Where a Chief CIT/Director General of income tax/CIT/Director of income tax finds that the four conditions laid down in the order u/s 119(2) dated October 12, 1993, are satisfied but still it is not a case of ''genuine hardship'' he should refer the belated refund application to the Board for final decision.

5. This order is effective from November 1, 1993, and will apply to all claims of refund pending as on that date and also in respect of all refund claims filed on or after that date.

6. The instructions contained, in this circular modify the earlier instructions on the subject and may please be brought to the notice of the officers working under your charge.

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Learned counsel for the respondents submits that since there was no valid return for the years 1990-91, 1991-92 and 1992-93 the Chief Commissioner of income tax declined the request of the petitioners for reduction or waiver of interest levied under sections 234A, 234B and 234C, vide exhibits F8 and P9 orders. The payments effected by the petitioner towards tax for the years 1990-91, 1991-92 and 1992-93 were self-assessed tax u/s 140A and interest due thereon. According to learned counsel for the respondents, Circular No. 670, dated October 26, 1993, confers no power on the Assessing Officer to admit belated returns where refunds are due to excess payments u/s 140A.

On a perusal of the above circular quoted above, it appears to me that when the Commissioner of income tax is satisfied that the returns were not filed due to reasons beyond the control of the assessee, he may refer the matter to the Board for reconsideration. In the instant case, for one year the Commissioner of income tax was satisfied that the delay in filing the return were not attributable to the petitioners. Therefore, he is not justified in extending the same to other years. Therefore, I have no hesitation to set aside the impugned order and remit the matter to the Commissioner of income tax to decide whether he will condone the delay or refer the matter to the Board for consideration. The entire exercise shall be concluded within six months from the date of receipt of a copy of this judgment.

Original petition is disposed of with the aforesaid direction.

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