IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SEVENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 11268 of 2004

Between:

M/s. Kawaljit Enterprises, Rep. by its Partner,
221, Bolton Street, Lamba Estate, Secunderabad. Rep. by its Managing Partner, Harinder Singh,
S/o. V.S. Lamsa, age 32 Years, R/o. Hyderabad.

..... PETITIONER

AND

1 The Commissioner of Income Tax, A.P. - I, Ayakar Bhavan,
Basheerbagh, Hyderabad - 500 004.
2 The Deputy Commissioner of Income Tax, Circle 4(3), Ayakar Bhavan,
Basheerbagh, Hyderabad - 500 004.
3 The Assistant Commissioner of Income Tax, Circle-13(4),
Hyderabad - 500 004.
4 Union of India, Rep. by its Secretary,
Department of Revenue, Ministry of Finance, New Delhi.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction in the nature of Writ of Mandamus or any other appropriate Writ as the Hon'ble Court deems fit, directing the Ist Respondent to waive interest of Rs. 3,91,090/- u/s. 220(2A)

Counsel for the Petitioner:MR.K.K.VISWANATHAM

Counsel for the Respondent Nos 1 to 3.: MR.J.V.PRASAD, Standing Counsel for Incometax Department

Counsel for the Respondent No.4: Mr.Rajasekhar Reddy, Standing Counsel for Central Government

The Court made the following :

ORDER:

(per Sri Bilal Nazki, J)

Heard the learned counsel for the parties and with their consent and in view of the fact that pleadings are complete, the Writ Petition is being disposed of at this stage.

In this Writ Petition an order of Commissioner of Income Tax, Hyderabad passed under Section 220 (2A) of the Income Tax Act, 1961; is challenged.

The grievance of the petitioner is that in terms of Section 220 of the Income Tax Act, he was entitled to waiver of interest but the Commissioner rejected his application, which is illegal.

Counter has been filed. The learned Commissioner has re-produced the contentions of the petitioner in his order and has finally come to the conclusion that the third condition laid down under Order 220(2A) of the Act was not satisfied 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.

From perusal of this Section, it is clear that in order to get benefit under this provision an assessee has to satisfy three conditions. Broadly speaking these conditions would be

i. that the payment of interest would cause genuine hardship to the assessee

ii. default in the payment of the amount on which interest was charged was due to circumstances beyond the control of the assessee, and,

iii. the assessee has cooperated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

The learned Commissioner found first two conditions satisfied, but, he found that the third condition was not satisfied. Therefore, the order of waiver could not be passed in favour of the assessee. The reasons for coming to the conclusion by the Commissioner that the assessee had not cooperated in the enquiry related to the assessment and recovery, are given by him in the order itself. They are:

a. it is seen from the record that the assessee has not appeared on different dates during the course of scrutiny assessment proceedings.

b. The assessee has not cooperated with regard to the payment of taxes. The A.O has to take up coercive steps for recovery of demand by destraint under Section 226(5). The assessee had then responded and requested for adjustment of refund in his sister concern by name M/s Kawaljeet Transport Corpn, towards

the demand in its case."

The reason given under (b) appears to be contradictory to the finding of the Commissioner that the condition No. 2 was satisfied. If the petitioner had not made the payment of the tax on which interest was charged due to circumstances beyond the control, how could he make the payment. Once the Commissioner had found that the condition No. 2 was satisfied and the default in payment of taxes was due to the circumstances beyond the control of the assessee, he could not reject the application of waiver on the ground that the assessee had not cooperated in the enquiry in connection with the recovery of amount due from him. He has also reasoned that the assessee had not appeared on different dates during the course of scrutiny of the assessment proceedings. Non appearance, at the hearing on a particular date or dates would not ipso facto mean non cooperation by the assessee in the assessment proceedings. On the other hand, the assessing authority has noted in its assessment order "However, I wish to place on record that the assessee and his AR have been cooperative in finalization of the case." If the assessing authority recorded that the assessee was cooperative, in our view mere seeking of an adjournment would not make his conduct different and non-cooperative.

Under these circumstances, we set aside the order of the Commissioner. However, in the interests of justice, we remand the case back to the Commissioner for fresh orders, keeping in view the observations made by us in this order.

Accordingly, the Writ Petition is allowed. No costs.

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BILAL NAZKI, J

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S. ANANDA REDDY,J

DATED: 27.7.2004.

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The Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday the Twenty Seventh day of July, two thousand and four.

To

1 The Commissioner of Income Tax, A.P. - I, Ayakar Bhavan, Basheerbagh, Hyderabad - 500 004.
2 The Deputy Commissioner of Income Tax, Circle 4(3), Ayakar Bhavan, Basheerbagh, Hyderabad - 500 004.
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