

## J. Jayalalitha Vs Commissioner of Income Tax and Others

**Court:** Madras High Court

**Date of Decision:** Sept. 30, 1999

**Acts Referred:** Constitution of India, 1950 " Article 226  
Income Tax Act, 1961 " Section 220, 220(2), 220(2A), 220(3)

**Citation:** (2000) 158 CTR 149 : (2000) 244 ITR 74

**Hon'ble Judges:** N.V. Balasubramanian, J

**Bench:** Single Bench

**Advocate:** V. Ramachandran, for Anitha Sumanth and G. Ashokapathy, for the Appellant; C.V. Rajan, for the Respondent

### Judgement

N.V. Balasubramanian, J.

The above writ petitions have been filed to quash the order in C. No. 1747/1/1997-98/C-II, dated October

15, 1997, passed by the Commissioner of Income Tax, Central II, Chennai-34, by which the petitions filed by the writ petitioner u/s 220(2A) of

the Income Tax Act, 1961 (hereinafter to be referred to as "the Act"), for waiver of interest levied u/s 220(2) of the Act as well as under Rule 5 of

the Second Schedule to the Act for the assessment years 1987-88 to 1992-93 were rejected.

2. The facts leading to the filing of the writ petitions are that the petitioner filed applications for waiver of interest under Rule 5 of the Second

Schedule to the Act levied by the Tax Recovery Officer for the assessment years 1987-88 to 1992-93. The Assistant Commissioner of Income

Tax, Central Circle 11(2), Chennai, also levied interest by a separate order dated February 20, 1997, u/s 220(2) of the Act for the said

assessment years, and the petitioner also filed separate applications u/s 220(2A) of the Act for various years mentioned earlier and the

circumstances leading to the levy of interest for various assessment years are as under : The petitioner is an assessee on the file of the Deputy

Commissioner of Income Tax, Special Range-II, Chennai-34. For the assessment years 1987-88 to 1992-93, the petitioner filed returns of

income declaring" the income derived by her. The assessments were completed by the Assistant Commissioner/Deputy Commissioner of Income

Tax on various dates determining the income and the particulars regarding the years of assessment, dates of completion of assessments and the

income assessed are as under :

Assessment year Date of completion Income assessed  
of assessment

Rs.

1987-88 23-12-1994 9,29,080

1988-89 23-12-1994 21,29,243

1989-90 13-2-1995 30,97,075

1990-91 2-3-1995 1,27,59,043

1991-92 13-3-1994 80,65,250

1992-93 21-3-1995 2,18,37,350

3. The petitioner preferred appeals against the aforesaid orders of assessment before the Commissioner of Income Tax (Appeals) (hereinafter to

be referred to as "the Commissioner of Income Tax (Appeals)") and the appeals were rejected by the Commissioner of Income Tax (Appeals).

The petitioner thereafter preferred appeals against the orders of the Commissioner (Appeals) before the Income Tax Appellate Tribunal

(hereinafter to be referred to as "the Tribunal"), and it is stated that the appeals are still pending on the file of the Tribunal.

4. Apart from the tax levied in the orders of assessment made for the abovesaid assessment years, the Deputy Commissioner of Income Tax also

levied interest u/s 139(8) and Section 217 of the Act in respect of the assessment years 1987-88 and 1988-89, and the details of the tax assessed

and the interest levied are as under :

Interest

Assessment year Tax assessed Under section 139(8) Under section 217

Rs. Rs. Rs.

1987-88 4,55,540 3,64,400 5,26,690

1988-89 11,08,401 7,19,700 11,18,170

5. In respect of the assessment years 1989-90 to 1992-93, apart from tax assessed, the Deputy Commissioner of Income Tax, Chennai, has also

levied interest under Sections 234A, 234B and 234C of the Act, and the particulars of tax assessed and interest levied are as under :

Assessment year Tax assessed Rs. Interest under section

234A 234B 234C

Rs. Rs. Rs.

1989-90 16,16,513 12,60,870 22,95,430 119

1990-91 68,69,147 38,46,696 82,42,920

1991-92 44,81,141 13,44,330 31,87,460

1992-93 1,21,63,022 7,29,780 87,57,360 8,432

6. According to the petitioner, while the appeals were pending before the Commissioner of Income Tax (Appeals), she filed applications before

the third respondent for stay of collection of the disputed tax. According to her, on the basis of the direction of the third respondent, various

amounts were paid in respect of the assessment years 1987-88 to 1991-92 which are as under :

Assessment year Date Amount Total Cumulative total

(Rs.) (Rs.) (Rs.)

1987-88 28-8-95 2,27,770 2,27,770 2,27,770

1988-89 -do- 5,54,200 5,54,200 7,81,970

1989-90 -do- 8,08,256 8,08,256 15,90,226

1990-91 20-11-95 5,00,000

8-12-95 5,00,000

18-1-96 5,00,000

25-2-96 5,00,000

19-3-96 5,00,000 25,00,000 40,90,226

1991-92 1-10-94 10,00,000

26-12-94 5,00,000

22-1-95 7,00,000 22,00,000 62,90,276

7. According to her, after the disposal of the first appeals, she was not in a position to continue to make the payments in accordance with the

scheme granted by the third respondent as all her properties were attached and bank accounts were frozen by the Income Tax Department as well

as by other governmental agencies. Then, she approached the Director-General of Income Tax (Investigation). According to her, until her bank

accounts and properties were frozen by the Directorate of Vigilance and Anti-Corruption, Chennai, as well as by the Income Tax Department, she

made the payments in accordance with the instalment scheme granted by the third respondent as well as by the Director-General of Income Tax

(Investigation) and she has paid towards tax and interest when the appeals are pending before the Tribunal totalling a sum of Rs. 5,62,40,124. The

case of the petitioner is that she had raised loans and effected a one-time payment of Rs. 3,97,26,573 covering the entire demand including the

demands which are under dispute before the Tribunal The case of the petitioner is that she has made the payments even before the due dates for

payment in accordance with the scheme for payment sanctioned by the Director-General of Income Tax (Investigation). It is also her case that she

is also entitled for the refund of a sum of Rs. 4,14,714 for the assessment year 1996-97. The petitioner received a notice levying interest u/s

220(2) of the Act in respect of the assessment years 1987-88 to 1992-93 and she was required to pay the following sums towards interest for the

said assessment years :

Assessment year Amount of interest levied

under section 220(2) (Rs.)

1987-88 3,71,064

1988-89 8,00,238

1989-90 13,67,181

1990-91 46,97,536

1991-92 25,31,565

1992-95 56,81,645

8. According to her, no notice or opportunity was given before the levy of interest u/s 220(2) of the Act. Against the levy of interest u/s 220(2) of

the Act, the petitioner filed petitions for waiver of the same before the Commissioner of Income Tax, Central-II(5), Chennai-34, u/s 220(2A) of

the Act. Section 220(2A) reads as under :

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.

9. The petitions filed by the petitioner for waiver of interest u/s 220(2A) of the Act were disposed of by the Commissioner of Income Tax, Central

Circle-II, Chennai, by his order dated October 15, 1997, wherein he has rejected the petitions on the ground that all the three conditions required

for the exercise of jurisdiction u/s 220(2A) of the Act are not satisfied, and it is against this order, the present writ petitions have been filed by the

writ petitioner.

10. According to the petitioner, in so far as the first condition, "payment of such amount would cause genuine hardship to the petitioner" is

concerned, she has mobilised funds for the payment of tax by raising loans which she had to pay because of the pressure of the Income Tax

Department. According to her, her residential house and all other properties were attached by the Income Tax Department as well as by the

Directorate of Vigilance and Anti-Corruption and she was put to considerable pressure and hardship. According to her, the amounts were paid,

though appeals were pending and the entire demand was disputed, and as a leader of a political party, she would not have availed of any financial

support given by the party, but for the hardship she was subjected to by the respondents, and she was forced to seek financial support from the

party and she could not have raised any fund from any other source since wide publicity was given to the fact that her assets had been attached by

the Income Tax Department and the Directorate of Vigilance and Anti-Corruption. She, therefore, submitted that since she has already availed of

whatever sources she could for mobilising funds for the payment of tax, it was impossible for her to raise any further funds for the payment of

interest. She, therefore, stated that payment of interest would cause genuine hardship and the view of the first respondent that it would not cause

genuine hardship is totally unjustified on the facts of the case.

11. She has also pleaded that she has complied with the second condition u/s 220(2A) of the Act, as she has stated that the demand raised against

her was so huge and all her bank accounts and other properties were attached and since her bank accounts were frozen, she was not in a position

to pay tax. According to her, she has produced all evidence before the first respondent to show that even on the date when the amounts became

due, she was not in a position to pay the huge tax liability. According to her, she also filed appeals against the orders of assessment and during the

pendency of the appeals, the Assessing Officer granted stay. She, therefore, stated that it is erroneous on the part of the first respondent to

conclude that the non-payment of tax on the dates on which the amounts were demanded would show that the non-payment of tax was not

beyond her control. According to her, the alleged default in the payment of tax on the relevant dates was due to circumstances beyond her control.

It is stated that she has fulfilled the second condition mentioned in Section 220(2A) of the Act.

12. The petitioner also stated that she has co-operated in the enquiry relating to assessments or other proceedings for the recovery of the amounts.

According to the petitioner, the Commissioner has taken into consideration the irrelevant fact of non-filing of the returns of income and according

to the petitioner, there is a total non-application of mind by the first respondent with reference to the fulfilment of the third condition. She submitted

that it is not the case of the Commissioner that she has not cooperated in the enquiry relating to the assessment proceedings and the mere fact that

the additions were made to the income is not a ground to hold that there was non-co-operation on her part in the matter of assessments. She,

therefore, stated that the conclusion that she has not co-operated in the matter of assessment on the ground that she filed returns beyond the time

and additions were made to the income is totally unjustifiable and opposed to the facts and law. She has raised several other grounds also

challenging the order of the Commissioner rejecting her petitions for waiver of interest u/s 220(2A) of the Act.

13. A common counter affidavit has been filed by the Deputy Commissioner of Income Tax, Central-II(-2), Chennai-34. According to the Deputy

Commissioner, the Commissioner has elaborately considered the various submissions and dealt with each one of them in detail. According to him,

the Commissioner has exercised his discretion properly. The Deputy Commissioner also placed reliance on the decisions of the Supreme Court in

Smt. Harbans Kaur etc. Vs. Commissioner of Wealth-tax, Jullundur, and KISHAN LAL Vs. UNION OF INDIA AND ANOTHER., and stated

that the order of the Commissioner is supported by reasons. Referring to the additions made in the orders of assessment, the Deputy

Commissioner stated that even after the confirmation of the orders of assessment by the Commissioner (Appeals), the petitioner did not choose to

take any effective step to clear the arrears of tax for the aforesaid assessment years and she sought only time to make payment, and even after the

instalment facility was provided to her, she has not availed of the same and she has failed to pay tax in accordance with the instalment scheme. The

Deputy Commissioner has stated that all the three conditions mentioned in Section 220(2A) of the Act were not satisfied. In so far as the first

condition is concerned, it is Stated, though her bank accounts were attached, such attachment was made by the Directorate of Vigilance and Anti-

Corruption only on September 27, 1996, whereas she had to pay tax in May, 1994, for the assessment year 1991-92 and between February and

April, 1995, for the assessment years 1987-88 to 1990-91 and 1992-93. It is, therefore, stated that the claim of the petitioner that payment

could not be made in view of the attachment is not correct.

14. It is also stated in the counter-affidavit that the petitioner had considerable money available in her proprietary concern, Dak Exports and the

Department on coming to know of the same, attached the amount and realised the same by means of taking garnishee proceedings; It is stated that

if the petitioner had really wanted to discharge the liability, she could have utilised the amount for discharging her liabilities, but, for reasons best

known to her, she did not do so and she had used it for her benefit. In so far as the condition regarding default in payment was due to

circumstances beyond the control of the petitioner is concerned, it is stated that the petitioner has not given any evidence to state as to why she

could not make the payment of demands as and when they were made. It is also stated that the petitioner did not effect payment of the amounts

due from her on due dates, but. sought for time for making the payment which request was granted by permitting her to pay the amount in

instalments, but the petitioner did not adhere to the instalment order and hence, the recovery proceedings were initiated for the recovery of the

amount. It is stated that even after the orders of assessment were confirmed on appeal by the Commissioner (Appeals), the Director-General of

Income Tax by order dated July 31, 1996, permitted the petitioner to pay 50 per cent. of the tax before August 5, 1996, and also permitted to

pay the balance of tax in six equal monthly instalments and as regards interest, the petitioner was directed to pay the same in twelve monthly

instalments from October, 1996. It is stated that the petitioner did not comply with the order and did not approach the Tribunal to obtain any order

of stay and only after recovery proceedings were initiated, the payments were made. It is, therefore, stated that the non-payment of the tax on

which interest is payable cannot be stated to be due to circumstances beyond the control of the petitioner. It is also stated that the petitioner could

have utilised the amounts received as gifts from various persons for making the payment in discharge of the amounts due to the Department.

15. In so far as the last condition, viz., that the petitioner should co-operate in any inquiry relating to the assessment or any proceeding for the

recovery of any amount due from her is concerned, the petitioner was not able to explain the source of the large amounts that were disclosed by

her and the petitioner could not produce any satisfactory evidence to substantiate her statement that the amounts were gifts made by her friends

and well wishers on the occasion of her birthday and other occasions. It is stated that the petitioner cannot be stated to have co-operated in the

enquiry and in the assessment proceedings. It is stated that the petitioner postponed the payment of tax due from her for various assessment years

from May, 1994, in respect of the assessment year 1991-92 and from February to April, 1995, for the other assessment years 1987-88 to 1990-

91 and 1992-93 till January, 1997, without any reasonable justification and even after the Department permitted the petitioner to make the

payment in instalments. It is stated that it cannot be stated that the petitioner had co-operated with the Department in the proceedings for the

recovery initiated against her. It is, therefore, stated that the petitioner has not satisfied any one of the conditions and the Commissioner was

perfectly justified in rejecting the petitions filed by the petitioner for waiver of interest.

16. The petitioner also filed a reply affidavit. According to the petitioner, the petitioner had taken effective steps to discharge the liability and her

conduct in the assessment proceedings clearly shows that she has co-operated with the Department. It is stated that she has paid the entire arrears

including the disputed tax notwithstanding the fact that the petitioner has not accepted the assessments and filed appeals which are still pending on

the file of the Tribunal. According to her, the assessments are arbitrary and the Commissioner has not applied his mind and has unjustly declined to

exercise the power u/s 220(2A) of the Act. It is stated that the petitioner has explained the reasons as to why the demands could not be paid on

the due dates and it was not possible for her to raise necessary funds at that time. It is stated that the observation of the Commissioner that since

the petitioner did not make the payment of tax as demanded the interest could not be waived clearly shows his non-application of mind. It is stated

that it is incorrect to state that gifts were available and it is equally incorrect to state that funds from Dak Exports were available. According to her,

the funds from Dak Exports were attached and realised by the respondents. She has stated that she has established lack of resources for payment

of tax on the due dates and paid the tax including the disputed tax out of borrowed funds. The petitioner also stated that the petitioner produced

evidence in support of her claim that there were gifts and according to her, she has extended full co-operation in completing the assessment

proceedings as well as the proceedings relating to recovery of tax. She has stated that her co-operation was evident from the fact that the entire

disputed demands, even though appeals are pending, were paid by borrowing funds. According to her, all conditions u/s 220(2A) of the Act are

satisfied and the Commissioner should have exercised the power of waiver. She has stated that the Commissioner has arbitrarily rejected her

applications without application of mind and, consequently, the order is liable to be quashed.

17. Mr. V. Ramachandran, learned senior counsel appearing for the petitioner, submitted that the petitioner has complied with all the three

conditions u/s 220(2A) of the Act. Learned senior counsel referred to various orders of assessment for various assessment years, and submitted

that the orders of assessment clearly show that the petitioner had extended full co-operation and even on Sundays, the authorised representative of

the petitioner attended the hearing and in the absence of any material, the Commissioner was not justified in holding that the petitioner had not co-

operated in the assessment proceedings. He also submitted that the appeals filed by the petitioner were disposed of on March 25, 1996, and the

Director-General of Income Tax (Investigation) has permitted the petitioner to pay 50 per cent. of the tax and directed her to pay the balance 50

per cent. of the tax in six monthly instalments starting from the month of September, 1996. Learned senior counsel submitted that the 50 per cent.

of the tax should have been paid on August 5, 1996, but the Directorate of Vigilance and Anti-Corruption attached the properties of the petitioner

and because of the attachment, the petitioner was not able to pay the tax on the due date and she has paid a sum of Rs. 3.97 crores on January 9,

1997, by raising loans from the party, and according to learned senior counsel, even before the expiry of six months, the petitioner had paid the

sum of Rs. 3,97,26,573. He submitted that all funds of the petitioner were locked up and the Commissioner has taken into consideration irrelevant

materials and rejected the applications for waiver. Learned senior counsel submitted that the circumstances were beyond her control and, hence,

the tax due could not be paid on the due dates, and it is nobody's case that amounts were available with her and in spite of the same, the petitioner

did not pay the tax demanded. He also submitted that the petitioner applied for stay and the Department also granted stay and the fact that the

Department as well as the Director-General of Income Tax granted stay clearly shows that the Department accepted the position that the petitioner

did not have sufficient funds and, accordingly, allowed the petitioner to pay the tax and interest in instalments. Learned senior counsel, therefore,

submitted that the order of the Commissioner of Income Tax rejecting the petitions for waiver of interest is unjustified and this court should set

aside the order. It is also submitted that since the first respondent has failed to exercise his discretion properly, this court should allow the writ

petitions.

18. Mr. C. V. Rajan, learned standing counsel for the Department submitted that the order of the Commissioner is a speaking order and it is

wrong to state that the petitioner has complied with all the conditions for the waiver of interest. He submitted that there was no genuine hardship

and since she mobilised the funds for payment of tax, no genuine hardship would be caused to her in the payment of interest also. He also

submitted that the default in the payment of tax amount cannot be said to be due to circumstances beyond the control of the petitioner and on the

due dates of payment, there was no freezing of bank accounts and the petitioner has also not extended co-operation in the matter of assessment.

He also submitted that the petitioner has paid the amount only after the Tax Recovery Officer initiated proceedings and there was no co-operation

even in the matter of recovery also. Therefore, he submitted that the petitioner did not satisfy any one of the conditions required for waiver of

interest u/s 220(2A) of the Act, and as the conditions for waiver of interest are not satisfied, the petitioner has not made out any case for waiver of

interest.

19. Before considering the rival submissions, it is relevant to notice the decisions relied upon by learned counsel for the parties. In KISHAN LAL

Vs. UNION OF INDIA AND ANOTHER., , the Supreme Court has held that the decision of the authority u/s 220(2A) of the Act is a quasi-

judicial decision. The Supreme Court has laid down the following proposition of law as to the mode of exercise of the power u/s 220(2A) of the

Act (page 87) :

When an application is filed under Sub-section (2A) of Section 220 the authority concerned is called upon to take a quasi-judicial decision. If it is

satisfied that the reasons contained in the application would bring the case under Clauses (i), (ii) and (iii) of Section 220(2A) then it has the power

either to reduce or waive the amount of interest. Even though in the said sub-section it is not stated that any reasons are to be recorded in the order

deciding such an application, it appears to us that it is implicit in the said provision that whenever such an application is filed the same should be

decided by a speaking order. The principles of natural justice in this regard would be clearly applicable. It will be seen that a decision which is

taken by the authority u/s 220(2A) can be subjected to judicial review, as was sought to be done in the present case by filing a petition under

Article 226 ; this being so and where the decision of the application may have repercussions with regard to the amount of interest which an

assessee is required to pay it would be imperative that some reasons are given by the authority while disposing of the application,

20. Learned standing counsel for the Department relied upon the decision of the Supreme Court in the case of Carborundum Universal Ltd. Vs.

Central Board of Direct Taxes, New Delhi, , wherein the Supreme Court has held that the power u/s 220(2A) of the Act is a discretionary power

and where the petitioner had an opportunity to represent his case in writing and the Board (then authority) had taken into consideration the report

of the Commissioner, the petitioner was not entitled to the right of being heard by the Board before the petition was disposed of by the Board.

21. In Mahalakshmi Rice Mills Vs. Commissioner of Income Tax, Karnataka-I, , the Karnataka High Court has held that the word, ""co-operation

in Section 273A of the Income Tax Act would mean that the assessee did not resort to litigation, obstruction or evasive tactics in concluding the

assessment and no more.

22. In N. Subhakaran Vs. Commissioner of Income Tax and Others, , the Kerala High Court laid down the following proposition (headnote) :

The Commissioner of Income Tax exercises discretionary power when passing"" an order u/s 273A of the Income Tax Act, 1961, on an

application for waiver of interest. The order should ex facie disclose the application of mind and should contain reasons in support of the order.

When an order is sought to be impugned on the ground that the officer concerned has not exercised his discretion properly in the sense that the

reason in support of the order has not been disclosed in the order, the defect cannot be cured by furnishing the reason by an affidavit. If that is

allowed, an order which is bad in the beginning may, by the time it comes to the court when challenged, get validated by the grounds supplied in

the affidavit.

23. In Smt. Harbans Kaur etc. Vs. Commissioner of Wealth-tax, Jullundur, , the Supreme Court held that if the conditions are satisfied, the

Commissioner has the discretion to reduce the amount of penalty or waive the entire penalty and the Supreme Court held as under (page 420) :

Even if the Legislature has not used the words, "in his discretion" in Section 18B(1), the Commissioner could have exercised only a discretionary

power in view of the employment of the word "may". Now, when Parliament used both expressions "may" and "in his discretion" together, the

position is placed beyond the pale of any doubt that the Legislature wanted an officer of the rank of the Commissioner to be reprimanded with the

discretionary power to choose between entire waiver or reduction in any proposition.

Of course, when the Commissioner, instead of giving a complete waiver, chooses to give only a reduction for the penalty amount he must indicate

in his order that he has applied his mind in that regard. In this view, there is no warrant for the proposition that the Commissioner, if satisfied of the

compliance of conditions, has only one choice, i.e., to waive the penalty in entirety. Otherwise, it may mean that the Commissioner can in a case

where condition"s are not satisfied, reduce the penalty amount. When conditions are not satisfied, the Commissioner cannot do either. Only when

the said conditions are satisfied that the occasion arises for the Commissioner to exercise his discretion not before.

24. It is relevant to notice here that the counter affidavit has been filed by the Deputy Commissioner of Income Tax, Central-II(2), Chennai, having

jurisdiction over the files relating to the petitioner. The order that is the subject-matter of challenge is an order passed by the Commissioner of

Income Tax, Central-II, Chennai, but the said authority has not chosen to file any counter affidavit.

25. There is no dispute that the power to be exercised by the Commissioner of Income Tax u/s 220(2A) of the Act is a quasi-judicial power. It is

implicit in the provisions of Section 220(2A) of the Act that the application should be decided by way of a speaking order and it is imperative that

reasons must be given by the Commissioner of Income Tax while disposing of the said application. As observed by the Supreme Court in Smt.

Harbans Kaur etc. Vs. Commissioner of Wealth-tax, Jullundur, , the Commissioner has the discretion to reduce the amount of interest or waive the

entire interest if the conditions are satisfied, which clearly shows that the reasons given by the Commissioner must be relevant and germane and the

order must indicate that the Commissioner has applied his mind to the questions raised in the application for waiver of interest. There is also no

doubt that all the conditions specified in Section 220(2A) of the Act must be satisfied before the Commissioner exercises the power of waiver or

reduction of interest. I am unable to accept the submission that before the levy of interest u/s 220(2) of the Act, an opportunity should be given to

the assessee as the accrual of interest is automatic u/s 220(2) of the Act, and it is made more specific in Section 220(3) of the Act which provides

that the power to grant extension of time for payment of tax in instalments would be without prejudice to the levy of interest u/s 220(2) of the Act.

26. In so far as the conditions mentioned in Section 220(2A) of the Act are concerned, it is imperative that the Commissioner should record a

finding that he is satisfied that the conditions mentioned in Section 220(2A) of the Act are fulfilled before reducing or waiving the interest paid or

payable under the Act. On the facts of the case, it is seen that the order of the Commissioner of Income Tax does not show that he has applied his

mind to the various conditions mentioned in Section 220(2A) of the Act while rejecting the applications filed by the petitioner for waiver or

reduction of the interest. In so far as the first condition, viz., that payment of tax amount would cause any hardship to the assessee is concerned,

the Commissioner has held that the said condition is not satisfied as the petitioner is a wealth-tax assessee. The fact that the petitioner is a wealth-

tax assessee is not a relevant consideration at all. The Commissioner has not taken into consideration the total value of the assets of the petitioner

during the relevant valuation periods relating to the assessment years in question, what were her liabilities during the relevant period relating to the

assessment years, and what was the net worth of the assets during the previous years relating to the assessment years in question. The

Commissioner has also not indicated in his order, whether the petitioner had assets and whether the assets were movable or immovable properties

and whether the assets were in the form of cash or they were realisable assets. The statement of the Commissioner that the petitioner is a wealth-

tax assessee is not a relevant circumstance to establish that the payment of interest amount would (not ?) cause genuine hardship to the petitioner.

27. The second reason given by the Commissioner that the petitioner had paid a sum of Rs. 93,23,325 and Rs. 3,97,26,573 on August 3, 1996,

and January 9, 1997, and therefore, the petitioner had the capacity to mobilise funds and things were under her control is also not a relevant

consideration at all. The case of the petitioner was that she had borrowed money from her party to discharge the liability and the view of the

Commissioner that she should have borrowed more money and paid the interest also is not a relevant consideration. It is also not clear what the

Commissioner meant by stating, ""things are under her control.

28. The third reason given by the Commissioner regarding existence of genuine hardship is also not a relevant consideration. The Commissioner

has stated that the Assistant Commissioner of Income Tax, in his report, has stated that nowhere the petitioner has represented in courts that she

was not able to mobilise funds to engage a lawyer because of her bank accounts and other assets being attached by the Directorate of Vigilance

and Anti-Corruption, and therefore, according to the Commissioner, the payment of interest would not cause any genuine hardship to the

petitioner. The reasoning of the Commissioner suffers from two infirmities. The Commissioner has not furnished a copy of the report of the

Assistant Commissioner of Income Tax to the petitioner before placing reliance on that report. Secondly, the report also does not establish that the

petitioner had funds and with that amount, the lawyers were engaged. The Commissioner has overlooked that the payment of a lawyer would-

depend upon the terms of engagement between a client and the lawyer and the Commissioner has also not stated the material for the statement of

the Assistant Commissioner that the petitioner had not made any representation before any court that due to want of funds, she could not engage a

lawyer. Therefore, all the three reasoning's given by the Commissioner of Income Tax that mobilisation of funds for payment of legitimate tax was

not beyond her control, and no genuine hardship would be caused to her cannot be considered to be relevant reasons. Further, the Commissioner

has not denied that the petitioner had borrowed money and discharged the tax liability. The view of the Commissioner seems to be that as she has

mobilised the funds for the payment of tax by borrowing the same from her party, she could have borrowed more money for the payment of

interest, and no genuine hardship would be caused to her is not at all a relevant consideration for the rejection of the applications for waiver of

interest.

29. In so far as the second condition, viz., that default in the payment of tax is due to circumstances beyond the control of the assessee is

concerned, the Commissioner has not shown any valid reason for the rejection of the applications. The Commissioner accepted the position that

the petitioner's bank accounts were frozen by the Directorate of Vigilance and Anti-Corruption and her properties were also attached. The

Commissioner was, however, of the view that in spite of the same, she was able to make the payment of Rs. 3.97 crores on January 9, 1997. The

Commissioner failed to notice that she had borrowed the money from her party to make the payment as the recovery proceedings were initiated

against her. Therefore, the reason given by the Commissioner that the petitioner could have taken steps to pay the interest also by borrowing more

money from her party is not relevant at all. The Commissioner is also not correct in his view that the circumstances were under the control of the

petitioner. The petitioner in her application before the Commissioner has stated that as against the income of Rs. 12,91,008 admitted by her for the

assessment years 1987-88 to 1992-93, the income assessed for the said assessment years was Rs. 4,88,17,041 and the difference has mainly

arisen because of the different views expressed by the Department treating her birthday gifts as assessable to tax. It is also stated that because of

the huge additions to her major source of income, the circumstances went beyond the control of the petitioner and, hence, the tax amounts could

not be paid on due dates. It is also stated that in addition to that, her bank accounts were frozen and properties were attached by the Directorate

of Vigilance and Anti-Corruption as well as by the Income Tax Department. The Commissioner was of the view that on the due dates of payment,

there was no freezing of bank accounts and, hence, the non-payment could not be termed as "beyond her control and circumstances were under

her control," That apart, in the affidavit filed in support of the writ petition, W. P. No. 17286 of 1997, the petitioner has made a categorical

statement as under : . .

The first respondent failed to note that the demands made against me were so large that even without the freezing of my bank accounts, I would

not be in a position to pay the taxes demanded on the due dates. I had also produced evidence and materials before the first respondent to show

that even on the due dates on which the amounts were demanded, I was not in a position to pay taxes.

30. As already noticed by me, the Commissioner of Income Tax, who has passed the order impugned has not chosen to file the counter affidavit

denying the statement made by the petitioner. As a matter of fact, in the counter affidavit filed by the Deputy Commissioner of Income Tax,

Central-II(2), Chennai, having jurisdiction over the files relating to the petitioner, the statement of the petitioner has not been controverted. The first

respondent has also not produced the relevant records to establish that the statement of the petitioner in the affidavit filed in support of the

aforementioned writ petition is, in any way, incorrect. The above statement of the petitioner clearly shows that the petitioner had produced

evidence and materials before the Commissioner of Income Tax to establish that even on the due dates of payment, she was not in a position to

pay the taxes. The Commissioner of Income Tax has not even adverted to the materials, nor did he consider the case of the petitioner that due to

the additions made in her assessments and due to different views expressed by the Department on the treatment of the gifts received by her on her

birthday occasions and other occasions, she was not in a position to pay the taxes on the due dates of payment and it was due to the

circumstances beyond her control, the amounts could not be paid by her. The Commissioner has given two reasons. The first reason is that the

petitioner paid Rs. 3.97 crores on January 9, 1997. It was explained by the petitioner that the amount was borrowed from her party and the said

statement of the petitioner was not denied by the Commissioner in his orders. The second reason given by the Commissioner is that there was no

freezing of bank accounts on the due dates of payment. But, the case of the petitioner was even on those due dates she was not in a position to

raise requisite money and due to the circumstances beyond her control, she could not pay the amounts due. The order of the Commissioner clearly

shows, that he has omitted to take into account the relevant circumstances before holding that the second condition prescribed u/s 220(2A) of the

Act is not satisfied.

31. In so far as the third condition, viz., co-operation in the matter of assessment is concerned, the reason given by the Commissioner is also faulty.

The Commissioner has stated that the returns were filed beyond the due dates and the petitioner did not pay any advance tax on the admitted

income. Clause (iii) of Section 220(2A) of the Act postulates the co-operation of the assessee in any inquiry relating to the assessment or any

proceeding"" for the recovery of any amount due from him and the Commissioner of Income Tax has overlooked the fact that the inquiry relating to

assessments would commence after the filing of the return and the belated filing of the return is not a relevant circumstance to hold that the assessee

has not co-operated in the inquiry relating to the assessment. The Commissioner, has not adverted to the assessment records of the petitioner and

examined the question whether the petitioner had co-operated in the inquiry relating to the assessment. He should have seen various orders of

assessment made in the petitioner's case and examined the question with regard to assessment records whether the petitioner has co-operated in

the inquiry relating to the assessment. In this connection various orders of assessment passed by the Assessing Officer are relevant. In the order of

assessment for the assessment year 1991-92, the Assessing Officer has stated that the chartered accountant on behalf of the petitioner attended

the hearing in response to the notice issued by the Assessing Officer and witnesses were examined on the side of the petitioner even on Sunday. In

the order of assessment for the assessment year 1987-88, it is also stated that the chartered accountant of the petitioner represented the assessee

and furnished various details and clarifications sought for. The above statement is found to be repeated in the other orders of assessment as well.

The Commissioner of Income Tax without noticing the statement made by the Assessing Officer in various orders of assessment has held that the

petitioner filed the returns belatedly and, hence, she was not eligible to get the relief u/s 220(2A) of the Act. The non-payment of advance tax on

the admitted income is also not a relevant consideration in considering the question whether the petitioner has co-operated in the inquiry relating to

the assessment.

32. In so far as the matter of recovery is also concerned, the Commissioner was of the view that the petitioner has not paid the amounts within the

stipulated time and the petitioner made the payment only after the Tax Recovery Officer initiated the proceedings. Here also, the Commissioner has

overlooked the fact that the department granted time for payment of the amounts in instalments and by order dated June 4, 1995, the petitioner

was earlier directed to pay 50 per cent. of the amount due and the balance was directed to be paid in instalments. Subsequently, the appeals were

dismissed by the Commissioner of Income Tax (Appeals) on March 25, 1996, and the petitioner was directed to pay the balance by a notice

dated May 30, 1996. Then, the petitioner sought for time for payment of tax and interest by her letter dated July 10, 1996. The Director-General

of Income Tax by his order dated July 31, 1996, has"" permitted the petitioner to pay 50 per cent. of the tax component of Rs. 1,86,46,651 before

August 5, 1996, and the balance of tax in six monthly instalments from September, 1996, to March, 1997. The petitioner was also directed to pay

the interest component of Rs. 3,04,03,247 in 12 monthly instalments. The petitioner on August 3, 1996, paid a sum of Rs. 93,23,325 being the 50

per cent. of the tax due and did not effect any other payment. When the recovery proceedings were initiated on October 17, 1996, the petitioner

paid the entire amount of Rs. 3,97,26,573 on January 9, 1997. Then, the petitioner filed petitions for waiver of interest levied under Rule 5 of the

Second Schedule and interest levied u/s 220(2) of the Act. The Commissioner has not considered the question what is the effect of the order

directing the petitioner to pay the amounts in instalments and the Commissioner has also not considered the effect of payment of the entire amount

when the Tax Recovery Officer initiated the proceedings. He has also not adverted to the question that due to the freezing of bank accounts and

attachment of the properties, whether the petitioner could have made the payment. The Commissioner has not considered the question, despite the

attachment of her properties, whether there was co-operation extended by the petitioner in the matter of payment of tax by raising loan and

discharging the liability. The order of the Commissioner shows that the Commissioner has not taken into consideration relevant circumstances, but

has taken into account irrelevant considerations while rejecting the applications filed for the waiver of interest. Since there is a non-application of

mind to the relevant circumstances while rejecting the applications for waiver or reduction of interest, I hold that the order passed by the

Commissioner of Income Tax is liable to be set aside, and, accordingly, it is set aside.

33. In the view I have taken, it is not necessary to consider various allegations made by the petitioner in the affidavit and reply affidavit as well as

the statements made by the respondents in the counter affidavit. However, it must also be mentioned here that certain new facts are stated in the

counter affidavit filed by the Deputy Commissioner of Income Tax, Central 11(2), Chennai, and it is well settled that the order impugned has to be

tested on the reasoning stated in the order and it is not permissible to improve the order by placing new facts in the counter affidavit. Further, I am

unable to accept the, submission of learned counsel for the petitioner that this court under Article 226 of the Constitution should grant the relief as

prayed for in the applications filed by the petitioner. In my view, the proper course would be to remit the matter to the Commissioner of Income

Tax to reconsider the matter de novo and consider the applications in accordance with law.

34. The result is all the writ petitions are allowed and the matter is remitted to the Commissioner of Income Tax for fresh consideration. However,

in the circumstances, there will be no order as to costs.