

(2007) 02 MAD CK 0038

Madras High Court

Case No: Writ Petition No. 19996 of 2003 and W.P.M.P. No. 24985 of 2003

N. Haridas and Co.

APPELLANT

Vs

Chief Commissioner of Income
Tax and Another

RESPONDENT

Date of Decision: Feb. 27, 2007

Acts Referred:

- Income Tax Act, 1961 - Section 148, 234B, 234C

Citation: (2008) 296 ITR 246

Hon'ble Judges: P.D. Dinakaran, J; Chitra Venkataraman, J

Bench: Division Bench

Advocate: D. Anand, for the Appellant; N. Muralikumaran, for the Respondent

Final Decision: Allowed

Judgement

P.D. Dinakaran, J.

The petitioner, a firm, is dealing in construction and sale of flats. One N. Haridas was its managing partner. With a view to avail of the benefit of the Voluntary Disclosure of Income Scheme, 1997, the managing partner, Haridas, made declaration on March 31, 1997. But, he fell ill and he was diagnosed with brain cancer. He became bedridden and died on February 20, 1998. In that melee, the tax could not be paid by the petitioner.

2. The second respondent issued a notice u/s 148 of the Income Tax Act, 1961 and on the basis of the revised return filed by the petitioner, reassessment was made. The petitioner paid the tax due and sought for waiver of interest levied under Sections 234B and 234C of the Income Tax Act, but the first respondent rejected the same. Hence, the petitioner has come forward with this petition to quash the order of the first respondent dated November 28, 2002, rejecting the claim of the petitioner for waiver of interest.

3. Learned Counsel appearing for the petitioner contends that when the tax was demanded under the Voluntary Disclosure of Income Scheme, the managing partner of the petitioner firm fell ill and subsequently died due to brain cancer and hence, the petitioner could not pay the tax as demanded, but the respondent Department without taking into account the unavoidable circumstances, levied interest which is erroneous, illegal and against law.

4. Concededly, the petitioner has paid the tax as demanded by the Department after reassessment. Originally, the petitioner sought to avail of the benefit of the Voluntary Disclosure of Income Scheme, 1997, but when the tax was demanded under the said scheme, it is contended, the managing partner of the petitioner fell ill and subsequently, he died due to cancer. The said factual position is not disputed by the respondents in the counter-affidavit.

5. Though the respondents claim that the levy of interest is mandatory in the case of default on the part of the assessee to pay tax demanded, it is not disputed that the first respondent, if satisfied on the facts and circumstances of the case, can reduce or waive interest. But, in the impugned order, the first respondent, without going into the merits of the case, observed that he is not empowered to waive the interest on the facts of the case and within the meaning of the notification F. No. 400/234/95/IT(B) dated May 23, 1996, governing waiver of interest.

6. On the other hand, a reading of the notification F. No. 400/234/95/IT(B) dated May 23, 1996 (see [Commissioner of Income Tax Vs. M.K. Chandrakanth](#)), as found in the counter affidavit, shows that the Chief Commissioner, the first respondent herein, can waive or reduce interest, if he is satisfied that it is a fit case to do so on the facts and circumstances. That apart, the petitioner has produced a copy of the notification in F. No. 400/29/2002/IT(B), dated June 26, 2006, which supersedes the earlier notification dated May 23, 1996, in which it is stated that the Chief Commissioner can consider the case of the assessee for waiver or reduction of interest if he is satisfied that on the facts and circumstances it is a fit case for doing so.

7. But the first respondent in the impugned order has merely observed that the condition prescribed in the notification dated May 23, 1996, is not satisfied, without going into the unavoidable circumstances of the case. We are of the view that the first respondent should have taken note of the unavoidable circumstance, viz., the sudden demise of the managing partner at the time when the tax under the Voluntary Disclosure of Income Scheme was demanded. Further, the petitioner filed a revised return on receipt of notice u/s 148 of the Income Tax Act and paid tax accepting the reassessment. We, therefore, hold that the first respondent is not correct in rejecting the claim of the petitioner for waiver of interest without properly appreciating the facts and circumstances of the case. Accordingly, the impugned order is liable to be set aside. Considering the fact that twelve years have passed, the earliest assessment year being 1994-95 and that the assessee has already paid

tax as per the reassessment, we are inclined to direct the first respondent to waive the interest levied in the impugned order, instead of remitting the matter back to the first respondent.

8. In fine, the writ petition is allowed setting aside the impugned order passed by the first respondent dated November 28, 2002. The first respondent is directed to waive the interest levied in the impugned order.

9. No costs. Connected W.P.M.P. is closed.