IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 14th DAY OF NOVEMBER 2017

BEFORE

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

WRIT PETITION No.36428/2016 (T-IT)

BETWEEN:

M/s. Gaonkar Mines,
Main Road, Tadri Port,
Kumta Tq., Ankola
Uttara Kannada District,
Karnataka – 581 437.
Rep. by its erstwhile partner,
Sri A.P. Gaonkar,
Aged about 35 years,
S/o Late Sri Prakash Gaonkar.

...PETITIONER

(By Sri. Mallaharao, Adv. for Sri. S. Parthasarathi, Adv.)

AND.

1. The Addl. Commissioner
   of Income-tax, Udupi Range,
   Udupi – 576103.

2. The Chief Commissioner of
   Income-tax, “Aayakar Bhavan”
   Plot No.5, EDC Complex,
   Patto, Panjim, Goa – 403 001.

...RESPONDENTS

This Writ Petition is filed under Articles 226 & 227 of the Constitution of India praying to quash the order of the R-2 dated 13.3.2014 under Section 119[2][a] of the Act for the assessment year 2005-06 vide Annex-K and etc.

This Writ Petition coming on for preliminary hearing this day, the Court made the following:-

ORDER

Mr.Mallaharao, Adv.**, for Mr.S.Parthasarathi**, Adv. for Petitioner

The petitioner, **M/s Gaonkar Mines** has challenged the impugned order passed by the respondent -- Chief Commissioner of Income-tax **(CCIT)**, Panjim, Goa, refusing to waive interest under Sections **234A, 234B and 234C of the Income-tax Act, 1961** (hereinafter referred to as the **'IT Act'** for brevity).

2. Following reasons have been recorded by the said respondent in the impugned order of **CCIT** for the **Assessment Year 2005-2006** passed on **13.3.2014**:

> *"I have carefully considered the facts of the case, the written submissions made by the assessee and the relevant provisions of law, in the light of Board's Circular prescribing*

conditions for waiver of interest. It is an admitted fact that there was a clear liability to deduct tax and the same was within the knowledge of the assessee. The disallowance u/s 40(a)(ia) was made due to non-deduction/remittance of tax on contract payment. The contract payments were found to have been made through out the year and accordingly TDS is required to be remitted by 7th of the subsequent month. ***It is also not disputed that there was a certain TDS liability on the contract payment made which is evident even*** *from clause 27(b) of the Auditor's Report. In view of the above,* ***it cannot be said that the assessee could have anticipated the disallowance u/s 40(a)(ia) as liability to pay TDS had already arisen*** *during the financial year itself and the same did not accrue as on the last day of the year. The charge of interest under section 234B and 234C consequent upon disallowance u/s 40(a)(ia), is therefore, automatic and mandatory in the given circumstances.*

6. Existing instructions on reduction or waiver of interest issued by the Board in notification in F.No.400/129/2002-IT(B) dated 26.06.2006 is reproduced below -

"2. The class of incomes or class of cases in which the reduction or waiver of interest under section 234A or section 234B or, as the case may be, section 234C can be considered, are as follows:

(a) *Where during the course of proceedings for search and seizure under section 132 of the Income-tax Act. or otherwise, the books of account and other incriminating documents have been seized, and* ***the assessee has been unable to furnish the*** *return of income for the previous year, during which the action under section 132 has taken place, within the time specified in this behalf, and the Chief Commissioner/ Director General is satisfied, having regard to the facts and circumstances of the case, that* ***the delay in furnishing such return of income cannot reasonably be attributed to the assessee.***

(b) Any income chargeable to income-tax under any ***head of income, other than Capital gains is received or accrued after due date of payment of the first or subsequent instalments of*** *advance tax which was neither anticipated nor was in the contemplation of the assessee, and the advance tax on such income is paid in the remaining instalment or instalments, and the Chief Commissioner/Director General is satisfied on the facts and circumstances of the case that this is a fit case for reduction or waiver of the interest chargeable under section 234C of the Income-tax Act."*

3. The learned Counsel for the petitioner, Mr.Mallaharao has urged before this Court that since the petitioner - Company was making payments to the contractors of the labour, who were poor persons and were not taxable under the provisions of the IT Act and therefore, the petitioner- Company did not have any

liability to make deduction of tax at source and as far as disallowance in the hands of the petitioner - assessee under Section **40(a)(ia)** of the IT Act is concerned, the matter has been remanded back by the learned Income-Tax Tribunal to the Assessing Authority and therefore on merits of such disallowance made under the said Section 40(a)(ia) of the IT Act, it is still pending adjudication and therefore the petitioner should be deemed to have satisfied the conditions of **Clause 2(b) of the Central Board of Direct Taxes (CBDT) Circular dated 26.6.2006,** quoted above.

4. Having heard the learned Counsel for the petitioner - assessee, this Court is of the opinion that there is no error in the impugned order passed by the respondent – Chief Commissioner of Income-tax. It is clearly and categorically held that he has no discretion under the **CBDT** Instructions or **Circular** dated **26.6.2006** inasmuch as the petitioner during the

contemporary period itself very well knew that non-deduction/remittance would be disallowable for want of deduction of tax at source under Section **40(a)(ia)** of the IT Act. Therefore, such additions to the returned income cannot be said to have arisen or accrued after the due date of payment of first or subsequent instalment of advance tax which was neither anticipated nor was in contemplation of the assessee and therefore in such circumstances, levy of interest under Sections 234A, 234B and 234C was automatic and the same cannot be waived.

5. This Court is satisfied that there is no error or perversity in the order passed by the respondent – Chief Commissioner of Income-Tax and the same is based on sound reasoning and in accordance with the **CBDT** Instructions in the matter. The present petition is found to be devoid of merits and is liable to be

dismissed. ***Writ Petition is accordingly dismissed.***
No costs.

Copy be sent to the respondents.

Sd/-
JUDGE

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