Court No. - 34

Civil Misc. Modification Application No. 2 of 2018
In

Case :- WRIT TAX No. - 566 of 2011

Petitioner :- Chander Prakash Jain
Respondent :- Commissioner Of Income Tax And Another
Counsel for Petitioner :- R.B. Shukla,Dinesh Tiwari
Counsel for Respondent :- C.S.C. Income Tax,D.Awasthi.

Hon'ble Sudhir Agarwal,J.
Hon'ble Rajendra Kumar-IV,J.

1. Heard Sri Vinayak Mittal, Advocate, for applicant and learned Standing Counsel for respondents.

2. This is an application on behalf of petitioner, Chander Prakash Jain, praying for modification of judgment dated 28.04.2015 passed by a Division Bench consisting of Hon'ble Arun Tandon and Satish Chandra, JJ. allowing Writ Petition (Writ Tax) No. 566 of 2011 partly, subject to observations made in the judgment. Since, both the Hon'ble Judges, constituting the Bench, have retired, hence, it has been nominated to the Bench presided by one of us (Hon'ble Sudhir Agarwal, J.) and as such it has come before this Court.

3. Since the application has been filed with delay, therefore, it is accompanied by an Application under Section 5 of Limitation Act, 1963 (hereinafter referred to as “Act, 1963”) seeking condonation of delay.

4. Having heard learned counsels for parties, we find it appropriate to condone the delay and the delay condonation application is, accordingly, hereby allowed.

5. Now coming to Modification Application, petitioner wants that judgment dated 28.04.2015 be modified by directing respondent-1 and 2 to pay compensatory interest at the rate of 9 per cent from 1996 till date.

6. Facts, necessary for deciding this application are stated as

under.

7. On 16.11.1994, a search and seizure operation under Section 132(1)(c) of Income Tax Act, 1961 (hereinafter referred to as “Act, 1961”) was carried out at the residential premises of petitioner where he was residing along with his mother and brothers. Another search was carried out on 22.11.1994 at the Bank of petitioner. Rs. 2,59,900/- lying in the Bank in petitioner's son's Saving Bank Account along with certificate of investment/deposit worth Rs. 3,45,997/- were seized by Income Tax authorities (hereinafter referred to as “Revenue”). The Assessing Officer, i.e, Assistant Commissioner of Income Tax (hereinafter referred to as “AO”) passed an order under Section 132(5) of Act, 1961 on 13.03.1995 estimating income of Assessee with reference to cash seized from Bank Account of petitioner's son, Prashant Jain, and the deposits/investments. For Assessment Years (hereinafter referred to as “A.Y.”) 1990-91 to 1994-95, the tax liability of petitioner was worked out to Rs. 1,41,583/-, interest under Section 234A, 234B and 234C as Rs. 24,801/- and penalty under Section 271(1)(c) as Rs. 4,14,749/-.

8. Petitioner filed appeal before Commissioner, Income Tax (hereinafter referred to as “CIT”) but it was dismissed as infructuous since a regular Assessment Order was passed on 29.03.1996. AO passed order on 28.09.1996 adjusting Rs. 67,038/- against existing demand of petitioner. He further adjusted Rs. 1,92,862/- against arrear demand of late Pushpa Devi (mother of petitioner). Thus entire cash of Rs. 2,59,900/- seized from the Bank Account of son of petitioner was exhausted.

9. Regular assessment order dated 29.03.1996 shows that AO has determined income at Rs. 84,959/- under the head 'income from other sources' and Rs. 16,50,000/- under the head 'long term capital gain'.

10. Assessee being dissatisfied with the aforesaid assessment order dated 29.03.1996, preferred appeal which was allowed by

Commissioner of Income Tax (Appeals) (hereinafter referred to as "CIT(A)"), vide order dated 29.11.1996 and demand was reduced to Nil.

11. Revenue, dissatisfied with the order of CIT(A), preferred appeal before Income Tax Appellate Tribunal (hereinafter referred to as "Tribunal") which was partly allowed. Tribunal decided the matter by order dated 28.12.2004 whereby in respect to capital gains in A.Y. 1992-93 it restored the order of AO dated 29.03.1996 and demand of other years were reduced to Nil.

12. Assessee came to this Court vide Income Tax Appeal No. 92 of 2005 under Section 260A of Act, 1961 which remained pending.

13. Pursuant to Tribunal's order, a fresh order of assessment was passed by AO on 19.04.2005. Petitioner preferred appeal before CIT (A) which was partly allowed vide order dated 17.01.2006.

14. Thereafter AO passed order dated 27.02.2006 determining tax liability of petitioner to Rs. 3,71,653/- in respect to capital gain. He also determined interest of Rs. 5,86,199/- under Section 220(2) of Act, 1961 for default in payment of said tax demand. Thereafter AO appropriated Rs. 4,66,551/- seized from petitioner's son's account against tax liability of Rs. 3,71,653/- and interest liability determined under Section 220(2) of Act, 1961 vide order dated 18.01.2007.

15. However, petitioner made an application for release of said seized assets further stating that he should be compensated for pecuniary loss caused due to cash deposit and also interest payable under Section 132B(4) of Act, 1961. Since the said application was not disposed of, he filed Writ Petition No. 1306 of 2010 which was disposed of directing AO to pass order on petitioner's application. Thereafter AO passed order dated 08.02.2011 which was challenged in the Writ Petition No. 566 of 2011 with which we are concerned. Petitioner has also prayed for a writ of mandamus directing respondents-1 and 2 to pay interest under Section 132B(4) of Act,

1961 and compensatory interest awarded on entire money seized on 22.11.1994 till the date tax liability of capital gains of Rs. 3,71,653/- was adjusted. A further mandamus has been sought directing respondents- 1 and 2 to pay compensatory interest to petitioner for depriving him to use money due to their failure to release seized assets immediately after assessment order dated 29.03.1996 was passed or to allow renewal of seized investments in IVPs and KVPs and deposits with the banks on the prevailing rates on the date of maturity till the assets are appropriated/released as per calculation in Annexure-12 to the writ petition. He has also sought a writ of certiorari and or prohibition restraining respondent-2 from charging interest under Section 220(2) for the period 01.04.1996 to 31.03.2006.

16. When the writ petition was pending, Court recorded statement of counsel for Revenue and pursuant thereto assets were released which included Kisan Vikas Patra, Indira Vikas Patra, Bank Fixed Deposits Receipts etc. The writ petition was partly allowed vide judgment dated 28.04.2015 in which some modification has been sought stating that AO has erred in law in its order dated 08.02.2011 while refusing to make payment of interest under Section 132B of Act, 1961 on the ground that Kisan Vikas Patra, Indira Vikas Patra, Fix Deposit Receipts had not been encashed. Court has categorically recorded a finding that retention of seized assets after regular assessment was finalized by order dated 29.03.1996, was invalid and illegal. Court has accepted the submission of petitioner that inaction on the part of Revenue resulting in loss of interest on investments like Kishan Vikash Patras, Indira Vikash Patras, Fixed Deposit Receipts etc. is clearly unjust and illegal, petitioner cannot be allowed to suffer the same and Department must make the said loss good. Relevant observations contained in the judgment read as under:

> *"It is not in dispute that because of non return of Kishan Vikash Patras, Indira Vikash Patras, Fixed Deposit Receipts*

etc., and because of non-extension of the period of their validity by the Revenue for all the said period these investments lay in the controll of the Revenue, although illegally, in our opinion, after assessment proceedings had been finalized. The same should have been returned to the assessee after assessment. This act of the department has resulted in uncalled for loss of interest on the aforesaid investment, in the shape of Kishan Vikash Patras, Indira Vikash Patras, Fixed Deposit Receipts etc. The loss has been caused to the assessee for no fault of his.

The Kishan Vikash Patras, Indira Vikash Patras, Fixed Deposit Receipts etc. would have earned interest in normal course of things, if they had been revalidated/encashed as per the option available to the Revenue. If the Revenue has failed to do so and the money all along continued to remain deposited with the Union of India and the available for utilization by the Revenue itself, we see absolutely no reason in the facts of the case as to why the Revenue may not be asked to pay interest on the aforesaid Kishan Vikash Patras, Indira Vikash Patras, Fixed Deposit Receipts etc., at part with the interest, which money would have earned, on the face value of the aforesaid documents, under the provisions of the Income Tax Act had the investments revalidated/renewed been encashed by the department."

17. It appears that after judgment dated 28.04.2015, an order was passed by AO on 03.07.2017 whereby it has ordered only 6 per cent interest to petitioner amounting to Rs. 4,06,076/- for which a cheque was issued but it has been dishonoured by Bank.

18. In the judgment dated 28.04.2015, we find that after quashing order dated 08.02.2011, this Court directed AO to re-determine interest in the light of observations made in the judgment and also in the light of judgments of Supreme Court in **Chironjilal Sharma Huf**

Vs. Union of India & Others reported in (2014) 360 ITR 237 (SC) and **Sandvik Asia Ltd. vs. Commissioner of Income Tax, Pune & Others reported in (2006) 2 SCC 508**. Directions contained in the judgment of this Court read as under:

> *"The Assistant Commissioner of Income Tax is directed to redetermine the interest as per the representation dated 28th September, 2010, in light of what has been recorded above and in light of the judgment of the Apex Court in the cases of Chironjilal Sharma Huf, Sandvik Asia Ltd. (Supras) strictly in accordance with the provisions of the Income Tax Act. Let necessary calculation of interest be done within four weeks from the date a certified copy of this order is filed before him. All consequential action shall be taken immediately thereafter."*

19. In the above direction, no specific rate of interest has been pointed out by this Court but reference has been made to Supreme Court's judgment while directing AO to pass order. We, therefore, do not find that the aforesaid judgment restricts entitlement of petitioner in the matter of relief towards interest in respect whereto loss has been suffered by him due to inaction on the part of Department. Therefore, we do not find any occasion for modification of the said order. Since in furtherance of judgment dated 28.04.2015, a fresh order has been passed by Deputy Commissioner, Income Tax, Circle-I, Meerut, which, if not in accordance with judgment of this Court dated 28.04.2015, remedy lies to challenge the same, therefore, we find no ground for any modification in the judgment.

20. The modification application is, accordingly, dismissed.

Dt. 12.03.2019
I.A.Siddiqui/PS

<u>Court No. - 34</u>

Civil Misc. Delay Condonation Application No. 1 of 2018
In
Civil Misc. Modification Application No. 2 of 2018
In
Case :- WRIT TAX No. - 566 of 2011

Petitioner :- Chander Prakash Jain
Respondent :- Commissioner Of Income Tax And Another
Counsel for Petitioner :- R.B. Shukla,Dinesh Tiwari
Counsel for Respondent :- C.S.C. Income Tax,D.Awasthi.

<u>Hon'ble Sudhir Agarwal,J.</u>
<u>Hon'ble Rajendra Kumar-IV,J.</u>

1. Allowed.

2. See order of date passed on Modification Application.

Dt. 12.03.2019
I.A.Siddiqui/PS