

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

WP(C).No. 2791 of 2007 (G)

PETITIONER(S):

THE FERTILIZERS AND CHEMICALS
TRAVANCORE LTD., UDYOGAMANDAL, COCHIN
REPRESENTED BY ITS DEPUTY CHIEF MANAGER
(FINANCE) PLACID LOPEZ.

BY ADVS. SRI.P.GOPINATH MENON.
SRI.ANIL D. NAIR

RESPONDENT(S):

1. THE DEPUTY COMMISSIONER OF INCOME TAX
(ASSMT) SPECIAL RANGE 2, ERNAKULAM.
2. THE CHIEF COMMISSIONER OF INCOME TAX,
KOCHI.

BY ADV.SRI.JOSE JOSEPH, STANDING COUNSEL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24.11.2014, THE
COURT ON16.1.2015 DELIVERED THE FOLLOWING:

A P P E N D I X

PETITIONER'S EXHIBITS :

EXT.P1 : TRUE COPY OF ORDER OF THE FIRST DEPUTY COMMISSIONER OF INCOME TAX (ASSMT) DT. 11.11.1992.

EXT.P2 : RUE COPY OF THE ORDER ISSUED BY THE FIRST RESPONDENT DT. 30.11.1993 TO THE PETITIONER.

EXT.P3 : TRUE COPY OF THE ORDER OF THE TRIBUNAL TO THE PETITIONER DT. 9.2.1998.

EXT.P4 : TRUE COPY OF THE ORDER OF THE SECOND RESPONDENT TO THE PETITIONER DT. 21.8.2006.

TGS

(TRUE COPY)

P.B.SURESH KUMAR, J.

W.P. (C) No.2791 of 2007

Dated 16th January, 2015.

J U D G M E N T

Ext.P4 order passed by the second respondent in exercise of the powers conferred on him by the Central Board of Direct Taxes under Clause (a) of sub-section (2) of Section 119 of the Income Tax Act,1961, hereinafter referred to as 'the Act' for short, is under challenge in this writ petition.

2. The petitioner is a public sector undertaking. It is an assessee under the Act on the file of the first respondent. For the assessment year 1990-91, the petitioner filed returns claiming the benefit of carried forward loss of Rs.6,42,65,257/-, worked out its book profit at Rs.3,61,32,102/- and offered the same for taxation under Section 115J of the Act. The first respondent while completing the assessment levied interest under Section 234C of the Act on the ground that there was shortfall in the payment of advance tax. The petitioner had though challenged the assessment order before the first appellate authority, the levy of interest under Section

234C of the Act was upheld by the first appellate authority and the said decision of the first Appellate Authority was confirmed by the Income Tax Appellate Tribunal. Thereafter, the petitioner filed a petition before the second respondent seeking waiver of interest levied under Section 234C of the Act, invoking his powers under Section 119(2)(a) of the Act and the same was dismissed by the second respondent holding that in so far as the levy of interest under section 234C of the Act was upheld by the first appellate authority in the appeal preferred against the assessment order and since the said decision of the first appellate authority was confirmed by the Tribunal, the assessee is not entitled to invoke the powers of the second respondent under Section 119(2)(a) of the Act, for waiver of the interest payable under Section 234C of the Act. Ext.P4 is the order issued by the second respondent dismissing the petition filed by the petitioner seeking waiver of interest. In Ext.P4, the second respondent had also held that the case of the assessee would not fall under the class of cases and incomes specified by the Central Board of Direct Taxes as per notification dated 26/6/2006 for the income tax authorities to exercise the power under Section 119(2)(a) of the Act. As

stated above, it is aggrieved by the said decision of the second respondent, this writ petition is filed.

3. Heard Adv.P.Gopinath Menon, the learned counsel for the petitioner and Adv.Jose Joseph, the learned Standing Counsel for the respondents.

4. The learned counsel for the petitioner contended, relying on the decision of the Karnataka High Court in **Kwality Biscuits Ltd. v. Commissioner of Income Tax** [2000 Vol.243 ITR 519] that since the book profit cannot be determined before the end of the relevant assessment year, the petitioner is not obliged to pay interest under Section 234C of the Act for non-payment of advance tax on the book profit.

5. Section 119 (1) and 119(2)(a) of the Act reads thus :

“119. (1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:

Provided that no such orders, instructions or directions shall be issued -

(a) so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions.

(2) Without prejudice to the generality of the foregoing power,-

(a) the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions of sections [115P, 115S], [115WD, 115WE, 115WF, 115WG, 115WH, 115WJ, 115 WK,] [139], 143, 144, 147, 148, 154, 155, [158BFA] [sub-section (1A) of section 201, sections 210, 211, [234A, 234B], 234C], 271 and 273 or otherwise), general or special orders in respect of any class of incomes [or fringe benefits] or class of cases, setting forth directions or instructions (not being prejudicial to assesseees) as to the guidelines, principles or procedures to be followed by other income-tax authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information;”

It is clear from Sections 119(1) and 119(2)(a) of the Act that the statute had conferred authority to waive interest payable under Sections 234A, 234B and 234C only on the Central Board of Direct Taxes and it is based on the general or special orders

issued by the Board, the other income tax authorities are exercising the power of waiver. It is also clear from the aforesaid Sections that the income tax authorities other than the Board are empowered and authorised to waive interest only in accordance with the guidelines, principles and procedures specified by the Board in general or special orders issued by the Board. The classes of incomes and cases in respect of which the Chief Commissioner of Income Tax is authorised to waive interest payable under Section 234C of the Act as per notification dated 26/6/2006 referred to in Ext.P4 order, which was made available to me by the Standing Counsel for the respondents, read thus:

“(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.

(c) Where any income was not chargeable to income-tax in the case of an assessee on the basis of any order passed by the High Court within whose jurisdiction he is assessable to income-tax,

and as a result, he did not pay income-tax in relation to such income in any previous year, and subsequently, in consequence of any retrospective amendment of law or the decision of the Supreme court of India, or as the case may be, a decision of a larger Bench of the jurisdictional High Court(which was not challenged before the Supreme Court and has become final), in any assessment or re-assessment proceedings the advance tax paid by the assessee during such financial year is found to be less than the amount of advance tax payable on his current income, and the assessee is chargeable to interest under section 234B or section 234C, and the Chief Commissioner/Director General is satisfied that this is a fit case for reduction or waiver of such interest.”

As stated above, the second respondent is empowered and authorised to waive interest payable by the petitioner under Section 234C of the Act only if the case of the petitioner falls under any of the two classes of cases referred to above. The petitioner has no case that its case would fall under the said classes of cases. The contention raised by the learned counsel for the petitioner that since the book profit cannot be determined before the end of the relevant assessment year, the assessee are not obliged to pay interest under Section 234C of the Act for non-payment of advance tax on the book profit also cannot be accepted, for, the question whether the

petitioner is liable to pay interest under Section 234C of the Act is not the issue in this case. As noticed above, the issue in this case is as to whether the second respondent is justified in declining the request made by the petitioner for waiver of interest in exercise of his authority under Section 119 of the Act. The decision relied on by the learned counsel for the petitioner is also not a decision rendered in the context of the authority of the income tax officers to waive interest under Section 119 the Act. Further, as noticed above, the question whether the petitioner is liable to pay tax under Section 234C of the Act was considered and decided against the petitioner in the appeal preferred by them against the assessment order of the concerned year and the said order has become final.

In the aforesaid circumstances, Ext.P4 order of the second respondent is perfectly in order. There is, therefore, no merit in the writ petition and same is, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.