

No refusal of interest waiver application just because Co. challenged notice issued by dept. attaching Bank a/c

Summary – The High Court of Madras in a recent case of Poompuhar Shipping Corporation Ltd., (the Assessee) held that where in response to notice issued under sec. 226(3), assessee approached High Court by filing a writ petition, it could not be a ground for refusal of waiver of interest under section 220(2) on ground that assessee failed to satisfy condition (iii) of section 220(2A) in as much as it had not cooperated with department

Facts

- The assessee was a wholly owned Government Company, engaged in freight of coal for the Tamil Nadu Electricity Board. During the relevant assessment years assessee had purchased ships and claimed investment allowance.
- Initially, the Assessing Officer accepted the claim of the assessee and allowed the investment allowance. Subsequently, invoking the provisions of section 155, read with section 154, he withdrew the investment allowance granted earlier on the ground that the assessee had not utilized the investment allowance reserve for the acquisition of new ships within the allowable period of 10 years.
- The assessee preferred an appeal before the first and second appellant authorities, which were rejected. Before the Tribunal, the assessee prayed for stay of recovery and the same was granted till the disposal of appeal by Tribunal. Ultimately, the Tribunal dismissed the assessee's appeals. Immediately, on dismissal of the appeals, the respondent issued a notice under section 226(3), attaching the assessee's bank account. The assessee filed a writ petition before Court, in which, the Court directed the Commissioner (Appeals) to take up the stay petition for consideration and until then, protected the assessee from recovery. After the disposal of the writ petition, the Bank accounts of the assessee were attached and steps were taken for recovery by issuance of notice under section 133(6) and summons was also issued under section 131 to furnish the list of debtors, list of persons to whom loans were advanced, etc.
- Subsequently, a meeting was convened with the officials of the department. The department acceded to the assessee's request to permit them to pay arrears of tax in instalments. The assessee had adhered to the instalment schedule as was granted by the Commissioner in pursuance to said meeting. However, there was a demand for payment of interest under section 220(2).
- The assessee filed an application under section 220(2A), requesting for waiver of interest. The assessee submitted that payment of interest under section 220(2) would cause genuine hardship to it, which was a Government owned Public Sector Enterprise and the default in non-payment of interest was due to the acute financial constraints and beyond the control of the assessee.
- The Commissioner rejected said application holding that the assessee failed to satisfy conditions specified in section 220(2A).
- On writ :

Held

- The provision of section 220(2A) starts with a *non-obstante* clause that notwithstanding anything contained in sub-section (2), the Chief Commissioner or the Commissioner may reduce or waive the amount of interest paid or payable by the assessee under the said sub-section if they satisfy three conditions namely:
 - (i) if the payment would cause genuine hardship;
 - (ii) default in payment was due to circumstances beyond the control of the assessee and,
 - (iii) the assessee has cooperated in the enquiry related to the assessment or other proceedings, recovery of any amount due from them.
- The second respondent in the impugned order has held that the assessee was non-cooperative, as they had approached this Court and filed a writ petition when notice under section 226(3) was issued. With regard to condition (ii), viz., circumstances beyond the control of assessee is concerned, the second respondent proposed to interpret one of the clause in the agreement between the assessee and the Tamil Nadu Electricity Board and came to a conclusion that self-inflicted unjust impoverishment has been done because the controlling authority of the assessee as well as the Tamil Nadu Electricity Board are one and the same. So far as the plea raised that the situation was beyond their control, the respondent referred to the balance sheet of the assessee and stated that they had a fixed deposit of Rs.4.4 crores and also earned interest income from term deposits and there is no visible financial hardship.
- The second respondent would state that the assessee did not cooperate in the proceedings and this conclusion is arrived at solely on the ground that the assessee filed a writ petition challenging a notice issued under section 226(3) of the Act. The explanation given by the assessee was that because they were reeling under financial loss, they were unable to meet the demand and appeal having been preferred as against the order of the Tribunal, they requested for an interim protection. In fact, Tribunal had granted an order of interim stay till the disposal of the appeal subject to certain conditions, which the assessee had complied with. Therefore, when notice under section 226(3) was issued, it was well open to the assessee to safeguard the interest of the company and for said purpose, they had approached the Court of law.
- Merely because the assessee had approached the Court of law, they should not be penalised or found fault with. Every person is entitled to seek appropriate remedy, when an action is initiated against him, unless and until it is established that such avilment of remedy before the Court of law was abuse of process of Court or for certain other *mala fide* reasons. In the impugned order, there is no such allegation against the assessee. Therefore, merely because the assessee approached the Court and filed a writ petition, they could not be put to prejudice nor could it be treated that the assessee did not cooperate in the proceedings. Therefore, the condition No (iii) contained in section 220(2A) stands complied with.

- With regard to other two facts, to be fulfilled for the entitlement of waiver, namely genuine hardship and circumstances beyond the control, the second respondent has interpreted the clause in the freight rate agreement dated 09-06-1987 and concluded that it is a self-inflicted injury by the assessee. The second respondent has no jurisdiction to sit in judgment over a condition contained in an agreement between two parties viz., two Government organization and that cannot be put against the assessee. Thus, the manner in which the second respondent has approached the issue is incorrect.
- With regard to financial difficulty, the second respondent would state that the assessee has a fixed deposit of a sum of Rs. 4.4 crores and they also earned interest income and the said fixed deposit is maintained specifically in connection with Kanyakumari ferry service, which is a matter of national importance and the fixed deposit has to be maintained for the purpose of acquiring the ferry and cannot be diverted for any other purpose. Thus, the observation with regard to financial condition of the assessee is also factually incorrect. Thus, for the above reasons, it is held that the assessee has fulfilled all the three conditions contained under section 220(2A) and thus, it was entitled for waiver of interest.