

HC granted waiver of sec. 234A interest as there was bona fide dispute to tax income in assessee's hands

Summary – The High Court of Madras in a recent case of R. Mani., (the Assessee) held that where there was bona fide dispute which directly related to assessability of assessee to tax and due to same assessee did not file its return, assessee was entitled to waiver of interest under section 234A

Facts

- The assessee had been assessed in the status of HUF for nearly two decades. The assessee's income was mainly from the property, sago commission income and income from a trust. Assessee did not file its return for relevant assessment years. A survey was conducted upon assessee, however, the survey did not lead to any immediate issuance of notice under section 148 later on. However, in the interregnum, itself the assessee filed his return of income. Thereafter, the Assessing Officer processed the return and the assessee was assessed to tax and interest was levied under sections 234A, 234B and 234C for both the assessment years.
- The assessee approached the Chief Commissioner under section 119(2)(a) for waiver of interest under sections 234A, 234B and 234C which was levied for the delay in furnishing the return of income, default in payment of advance tax and for shortfall/deferment in the payment of advance tax respectively. The assessee in his application for waiver stated that he was under the *bona fied* belief that he had no taxable income and therefore not required to file a return. Further, there was a family dispute among the members with regard to the properties and a partition suit was pending; there was a case pending before the debt Recovery Tribunal and as a consequence of which, the petitioner was attending banks, Courts and authorities and there was slump in the sago business. The Chief Commissioner had rejected the petition for waiver on the grounds that the assessee failed to voluntarily file its return but the return were filed consequent upon a survey conducted under section 133A and issuance of notice under section 148 and tax on the assessed income was not paid which was a pre-condition for waiver of interest; there was no reasonable cause as required under the Circular of the Central Board bearing Circular No. 400 and the conditions prescribed in the Board's Circular were not satisfied for waiver of interest under sections 234A, 234B and 234C.

Held

- It has to be seen as to whether the respondent was right in rejecting the petitioner's application for waiver of interest. The power for waiver granted to the respondent emanates from the guidelines framed by the Central Board in the form of a circular. The circular which held the field during the relevant time was Circular No. 400 and in order to be entitled to the benefit of the Circular, the assessee should fall within one of the conditions stipulated therein. So far as the waiver of interest under section 234A, clauses 2(a) and 2(e) of the Board Circular No. 400 have to be fulfilled.
- The respondent has rejected the petitioner's request for waiver on the ground that he has not voluntarily filed the returns of income but has filed after deduction by the Assessing Officer. This

appears to be the stand in the counter affidavit as well. The assessment years in question are 1997-98 and 1998-99. Record of the proceedings shows that the petitioner had not filed return of income for the assessment years 1994-95, 1995-96 and 1996-97 and the explanation given is that he had no taxable income during the said years. Further, the property continued to remain as HUF property *i.e.* it remained undivided and there were serious civil disputes between the family members and to establish the same the petitioner had filed the copy of the plaint in O.S.No. 200 of 2014 on the file of the Sub Court, Salem, filed for partition in which the petitioner was the 6th defendant. Thus, it is the petitioner's case that he was under the *bona fide* belief that there is no taxable income and consequently not required to pay any advance tax.

- It has to be seen as to whether the case pleaded by the petitioner could brought under clause 2(e) of Board Circular No. 400 (referred supra). A survey was conducted in premises of the assessee on 22-01-1999. However, the survey did not lead to any immediate issuance of notice under section 148 later on. However, in the interregnum, itself the assessee filed his return of income. Thereafter the Assessing Officer had taken up the matter and completed the assessment under section 143(2) and passed an order accepting the return filed by the assessee with no further additions. Thus, merely because there was a survey conducted in the premises, can it be stated the petitioner had not voluntarily filed the return before deduction.
- It cannot be stated that the material collected at the time of survey can be any evidentiary value. In fact well before the issuance of notice under section 148, the petitioner had filed the return of income. Therefore, the survey conducted in the premises cannot be treated to be one of circumstances to show that there was a deduction of any income which has escaped assessment to tax. Therefore, this Court is of the view that the petitioner's case would squarely fall under clause 2(e) of the Board Circular. Further, the Central Board of Direct Taxes by circular issued a Notification in F.No. 286/2/2003-IT (Inv), dated 10-3-2003 with regard to the confessions recorded during the survey, search and seizure operations and it was held that while recording the statement during the course of search, seizure and survey operations, no attempt should be made to obtain confession as to the non-disclosed income. The above circular would add to the interpretation given by this Court to show that a survey cannot tantamount to deduction by the Assessing Officer as referred to clause 2(e). Thus, this Court is fully satisfied that the assessee due to unavoidable circumstances did not file return of income and had done so before issuance of notice under section 148 which at best could be treated to be a deduction by the Assessing Officer. If the petitioner is to succeed on the request for waiver of interest under section 234, it has to be seen as to whether the petitioner would be entitled for waiver under sections 234B and 234C.
- The revenue would strongly contend that there are separate conditions to be adhered to by the assessee to be entitled for waiver of interest under sections 234B and 234C. As pointed out earlier, the petitioner's case was that he had no taxable income.
- This plea had not been controverted by the revenue and this is evident from the conduct of the assessee in not filing returns for earlier three years, *i.e.* 1994-95 to 1996-97. That apart, the assessee

had been able to establish that the property in question still remained undivided and no definite share in property or share to any co-parcener has been allotted and the suit for partition was pending. Apart from that, returns filed by the assessee had been accepted and assessment had been completed with no further additions. The consistent case of the assessee is that the property continued to remain undivided and no income arose from the property to the assessee and as there was no taxable income, returns were not filed. The assessee established his *bona fides* by referring to the suit for partition, which was pending trial, in which the assessee was arrayed as 6th defendant. Thus, when the property continues to remain undivided, the assessee cannot anticipate the accrual/receipt of such income. The circular issued by the Board empowering the Chief Commissioner to consider the waiver petition for waiver of interest under section 234A as well as section 234B would show that even in cases covered by section 234B and even though these provisions are compensatory in nature, special orders for grant of relaxation could be passed. Thus, this Court is convinced that the dispute with regard to the division of property was a *bona fide* dispute which directly relates to the assessability of the petitioner to tax. Therefore, if the petitioner is entitled for waiver of interest under section 234A for the reasons set out above, the question of payment of advance tax nor a portion thereof will not arise and therefore, the petitioner is entitled for waiver of interest under sections 234B and 234C. The above observations have been made by this Court considering the facts and circumstances of the case much of which has not been disputed by the revenue. Thus, for the above reasons the petitioner is entitled to succeed.