

No waiver of sec. 234A/B/C interest if assessee disclosed income pursuant of search: HC

Summary – The High Court of Madras in a recent case of A. Kuberan, (the Assessee) held that where assessee had made disclosures only after detection pursuant to search, thus, disclosure was not a voluntary disclosure before department, assessee could not claim waiver of interest under sections 234A, 234B and 234C by invoking Circular No. 400/29/2002

Facts

- During the course of search under section 132, the assessee had given a statement on oath under section 132(4). The sworn statement was recorded and subsequently, the Assessing Officer issued notice under section 148. The assessee did nothing thereafter, but after several notices were issued, the assessee filed return and subjected for assessment.
- The assessee filed an application for waiver of interest levied upon it under sections 234A, 234B and 234C. The Chief Commissioner rejected the application of the assessee.
- On writ:

Held

- The assessee had given a statement on oath under section 132(4) during the course of search under section 132. Disclosure was made only after detection pursuant to the search. Therefore, it is clear that the petitioner's disclosure is not a voluntary disclosure before the department. The sworn statement was recorded and subsequently, the Assessing Officer issued notice under section 148. The assessee did nothing thereafter, but it appears that after several notices were issued, the assessee filed return and subjected for assessment. In the background of the conduct of the assessee it has to be seen as to whether the assessee is entitled to the waiver of the statutory interest payable under sections 234A, 234B and 234C.
- The Division Bench in the case of *Chief CIT v. Rajanikant & Sons* [\[2017\] 83 taxmann.com 162/396 ITR 171/249 Taxman 122 \(Mad.\)](#) while, considering the scope and ambit of Circular dated 26-6-2006 took note of the circumstances under which the Chief Commissioner and/or the Director General of Income Tax would have power to reduce or waive interest.
- The discretion conferred upon the respondent is clearly circumscribed and set out in paragraphs 2(a) to 2(d) of the circular dated 26-6-2006. The right to claim waiver of the interest is not a statutory right given to the assessee but based on the circular and therefore, strict interpretation of the circular has to be done.
- Facts of the case clearly reveals that the assessee did not fall under any of the clauses 2(a) and 2(d) of the circular, dated 26-6-2006. Therefore, the respondent was fully justified in not exercising his

discretion and waiving the interest levied. Thus, there is no error in the impugned order. Accordingly, the writ petition fails and dismissed.