

Rejection of interest waiver application justified if tax payment was delayed by 14 yrs without genuine hardship

Summary – The High Court of Bombay in a recent case of Video Master, (the Assessee) held that where assessee-firm consciously delayed payment of tax by fourteen years even though its partners had sufficient funds and it did not co-operate in assessment proceedings, its application for waiver of interest under section 220(2A) was rightly rejected

Facts

- The assessee-firm was engaged in the business of production and sale of video cassettes and purchase and sale of video copy rights, etc. Consequent to search the assessment was completed under section 158BC in 1996 for the block period 1985 to 1995. The assessee-firm finally paid the full amount of tax after fourteen years. Before that the assessee filed an application to the Chief Commissioner seeking waiver of interest payable on the taxes determined for the block period to the extent there was delay in making the payment of taxes to the revenue.
- The Chief Commissioner rejected the application on grounds that partners of assessee-firm had funds available with them to meet the demand. It was also held that the assessee had not co-operated in expeditious disposal of the assessment as it had retracted its statement.
- On writ:

Held

- The demand of taxes on which interest is now payable, relates to the block period 1-1-1985 to 24-8-1995. This demand was caused as a consequence of search on undisclosed income of the petitioner. The petitioner contested the assessment and did not pay the taxes even when its challenge was negated by the Tribunal in 2001 and by the High Court as far back as in the year 2004. Notwithstanding the above, the petitioner did not pay the taxes. On the contrary, it had discharged its obligation with regard to the taxes fully as late as in 9/2016. The impugned order places reliance upon the report of the Assessing Officer which indicated that the partners of the assessee-firm were in possession of sufficient funds to meet its obligation. The challenge to the above finding is that, petitioner's hardship should be seen on a stand alone basis without considering the financial position of its partners. This submission cannot be accepted, particularly in view of section 188A which makes the partners jointly and severally liable for the tax payable by the firm under the Act. The fact that the partners of the petitioner have funds to meet the tax demands of the firm was not challenged. In fact, non-payment of taxes and interest thereon by the petitioner when its partners who are severally liable to pay the dues of the firm even when they are possessed of funds would dis-entitle the petitioner to any reliefs under article 226 of the Constitution of India.

- Moreover, the Commissioner, in the impugned order, also found that during the assessment proceedings, statements were made and retracted. This would, by itself, establish the fact that full co-operation was lacking during the assessment proceedings. Thus, the petitioner is not entitled to waiver of interest.
- It is noted that there is no supervening impossibility which had made it difficult/impossible for the petitioner to pay the taxes for the block period 1985 to 1995. Further, in the facts arising in the present case, the principle that the person cannot take advantage of his own wrong would apply as the petitioner has failed to pay his taxes conscious of the fact that non-payment will be visited with interest, if its plea is not accepted in appeal. Therefore, view taken by the impugned order of Commissioner is a reasonable view and would not warrant an interference under article 226 of the Constitution of India.