

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 17TH DAY OF OCTOBER 2012/25TH  
ASWINA 1934

WP(C).No. 10214 of 2005 (N)

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PETITIONER(S):  
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SMT.GILLS BENNY, PUNNELI PARAMBIL  
HOUSE, KOMBODINJAMAKKAL P.O., (VIA)  
KALLETUMKARA  
PROPRIETOR, THOMSON, POULTRY FARM.

BY ADVS.SRI.P.SANTHALINGAM (SR.)  
SRI.S.SHARAN

RESPONDENT(S):  
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CHIEF COMMISSIONER OF INCOME TAX  
AYAKAR BHAVAN, I.S. PRESS ROAD, ERNAKULAM.

BY ADV. SRI.P.K.R.MENON,SR.COUNSEL,GOI(TAXES)  
BY ADV. SRI.GEORGE K. GEORGE, SC FOR IT  
SC SRI.JOSE JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY  
HEARD ON 17-10-2012, ALONG WITH WPC. 10362/2005,  
THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING

WP().10214/05

APPENDIX

PETITIONER(S) EXHIBITS

EXT. P1 COPY OF THE REVALUATION APPLICATION DATED 17-02-2012 SUBMITTED BY THE FIRST PETITIONER BEFORE THE RESPONDENTS

EXT. P2 COPY OF THE REVALUATION APPLICATION DATED 17-02-2012 SUBMITTED BY THE SECOND PETITIONER BEFORE THE RESPONDENTS

EXT. P3 COPY OF THE JUDGMENT IN WP(C) NO 6878 OF 2012 DATED 20-03-2012

/true copy/ PA To Judge

ANTONY DOMINIC, J

.....  
W.P.(C)s.10214 & 10362/2005

.....  
Dated this the 17th day of October, 2012

JUDGMENT

Heard the learned counsel for the petitioners and also the learned Standing Counsel appearing for the respondents.

2. Petitioners in these cases own Poultry farms. On 4.1.2001, their premises were surveyed under Section 133A of the Income Tax Act, when it was found that they Were not maintaining proper books of accounts. Subsequently, they filed returns for the assessment years 1998-99, 1999-00 and 2000-01 returning taxable income.

Assessments were completed and interest under Section 234A, 234B and 234C were levied. There upon they made Ext.P1 applications to the Chief Commissioner on Income Tax seeking waiver of the interest levied. That application was rejected by the Chief Commissioner as per Ext.P4 order. It is this order which is under challenge in this writ petition.

3. The ground on which the application has been rejected is that the case of the petitioners is not covered by the grounds mentioned in clauses (a) to (e) of paragraph 2 of the Board's notification dated 23.5.1996.

4. Admittedly, Sections 234A to C do not provide for waiver of interest. However, power of waiver has been conferred on the Chief Commissioner and the Director General by virtue of the Board's notification dated 23.5.1996. Notification also provide in clauses (a) to (e), the circumstances in which the waiver can be granted. Those circumstances are extracted in paragraph 6 of the order.

5. Case of the petitioners is that on account of a bona fide mistake, they could not file the return or pay tax in time. In the light of this contention, the question to be considered is whether the case of the petitioners is covered by the circumstances mentioned in clauses (a) to (e) mentioned in the notification dated 23.5.1996.

Following are the circumstances mentioned in the notification referred to above:-

(a). Where a search is conducted under section 132 and books of accounts and other documents have been seized and the assessee is unable to furnish the return of income for the previous year during which the search was conducted.

(b). Where cash is seized in the course of search u/s 132, which is not allowed to be utilized for payment of advance tax instalment or installments which fall due after the seizure and the assessee has not paid fully or partly advance tax on the current income.

(c). Where any income chargeable to Income Tax under any head other than Capital gains is received or accrued after the due date of payment of instalment 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 installments.

(d). Where any income which was not chargeable to tax on the basis of any order passed by the jurisdiction of High Court in the case of the assessee becomes taxable in consequence of any retrospective amendment of law or a decision of the Supreme Court in his own case which takes place after the end of any such previous year and hence the advance tax paid by the assessee during the financial year immediately preceding the relevant assessment year is found to be less than the amount of advance tax payable on his current income.

(e). Where the return of income could not be filed by the assessee due to unavoidable circumstances and it was later filed voluntarily without detection by the assessing officer.

6. In my view, the contention raised by the learned counsel for the petitioners cannot be said to be one which is covered by any one of the aforesaid circumstances. If that be so, rejection of their claim for waiver of interest cannot also be said to be illegal.

I do not find any merit in the writ petitions. They are accordingly dismissed.

Sd/- ANTONY DOMINIC, JUDGE

mrcs

/true copy/ PA To Judge