Pradnya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1363 OF 2021

Jitendra M. Doshi (Deceased)]
]
1] Dina Jitendra Doshi, (Spouse)]
Age – 73,]
2] Deepa Jitnedra Doshi, (Daughter)]
Age – 48]
3] Janak Jitendra Doshi, (Son)]
Age – 38]
]
All residing at 1802, Tower 1,]
Green Ridge Society, Link Road,]
Borivali (West), Mumbai 400 092]
]
4] Chhaya Nitin Vora (Married Daugher)]
Age – 38]
Residing at 201, Vasant Cottage,]
2nd Floor, Carter Road No.2,]
Borivali (East), Mumbai 400 066]…Petitioners

Versus

1] Chief Commissioner of Income Tax]
Central – 1, Mumbai]
Room No.108,]
Aaykar Bhavan, M. K. Marg,]
Mumbai – 400 020]
]
2] Deputy Commissioner of Income Tax]
Central Circle – 2(3), Mumbai]

(Erstwhile : Dy. CIT – C.C. - 9, Mumbai)]
Aaykar Bhavan, M. K. Marg,]
Mumbai – 400 020]

3] Tax Recovery Officer]
Central -1, Mumbai]
(Erstwhile: T.R.O – Cen. - 2, Mumbai)]
904, 9th Floor, Pratishtha Bhavan,]
Old CGO Annexe, Maharishi Karve]
Road, Mumbai – 400 020.]
]

4] Union of India,]
Through the Commissioner of]
Income Tax, Central Circle, Mumbai]
Aayakar Bhavan, M. K. Road,]
Mumbai – 400 020]...Respondents

Mr. P J Pardiwala, Senior Advocate a/w Mr. Sameer Dalal i/by Mr. Sudhakar G Lakhani, for the Petitioners.
Mr Suresh Kumar, for the Respondents.

CORAM **M.S. Sonak &**
Jitendra Jain, JJ.
Reserved on : 14 January 2025
Pronounced on : 16 January 2025

JUDGMENT: (*Per M. S. Sonak, J.)*

1. Heard learned counsel for the parties.

2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

3. The Petitioner, and after his demise, the legal representatives of the deceased Petitioner challenge order dated 28 February 2020 (Exhibit 'J') made by the Chief Commissioner of Income Tax (Central)-I rejecting the petitioner's application for waiver of interest under Section 220(2A) of the Income Tax Act, 1961 ("IT Act").

4. Mr Pardiwala, learned Senior Advocate for the Petitioner, submitted that on 26 July 2007, after a search, the Petitioner's movable assets like gold bars, jewellery, investments and cash aggregating to Rs.71,35,730/- were seized. As the proceedings for assessment ended on 8 March 2010, the Petitioner requested the Assessing Officer ("AO") to encash the seized investments and adjust the proceeds towards the tax demand. On 20 September 2013, Petitioner reiterated this request. This time, the Petitioner also requested the AO to sell the gold and other jewellery that had been seized.

5. Mr Pardiwala submitted that the above request was repeatedly reiterated. However, the AO did not take steps to dispose of the seized assets and adjust them against the tax demands. He pointed out that as a result, the Petitioner suffered losses on account of interest, etc. He submitted that the Petitioner, a senior citizen, had to sell his property to settle the tax demand. He also submitted that the Petitioner was suffering from some ailments.

6. Mr Pardiwala submitted that on 4 February 2019, the Petitioner filed an application seeking a waiver of interest levied on the Petitioner under Section 220(2) by referring to several factual circumstances. This application was made

under Section 220(2A) of the IT Act. Mr Pardiwala pointed out that the application was rejected by the impugned order dated 28 February 2020. Hence, this Petition.

7. Mr Pardiwala submitted that the rejection of the Petitioner's application is for reasons that are irrelevant, factually incorrect, and legally untenable. He submitted that since the Petitioner was not required to make balance-sheet, there was no question of the Petitioner being required to produce such a balance sheet. He submitted that the Petitioner properly disclosed the source of Rs.91.83 lakhs. The finding about Petitioner having some agricultural income fails to notice that this income was hardly Rs.5 lakhs per annum. The Chief Commissioner should not have adverted to the returns filed by the Petitioner for Assessment Year 2002-2003 to 2008-2009 in which some refunds may have been claimed. Mr Pardiwala submitted that the financial position of the Petitioner at the time of seeking waiver was important and not the Petitioner's financial position at some earlier point in time.

8. Mr Pardiwala submitted that the Petitioner’s stand regarding the acquisition and disposal of seized assets was consistent. He also submitted that the Petitioner's failure to file the wealth tax returns or pay the wealth tax should not have been considered because, by law, the Petitioner was not required to file any wealth tax.

9. Mr Pardiwala submitted that no additions were made to the Petitioner's declared income on the alleged income referred to in the impugned order at any stage. Having not made addition, the Chief Commissioner was not justified in

rejecting the Petitioner's application for waiver on the grounds contained in the impugned order dated 28 February 2020.

10. Mr Pardiwala submitted that the Chief Commissioner did not apply the correct parameters for considering an application under Section 220(2A) of the IT Act. In any event, the findings and observations made by the Chief Commissioner are perverse. He submitted that the factum of the Petitioner's age and that he was suffering from multiple health ailments was not adequately considered by the Chief Commissioner.

11. Mr Pardiwala relied on **Chander Prakash Jain vs Commissioner of Income-Tax**[1] to submit that where Fixed Deposit Receipts, Vikas Patras seized from an assessee were not encashed despite a request from the assessee, interest was ordered to be paid on the same. He submitted that though the Petitioner is not requesting any interest, this factor of the department retaining the investments and not encashing them despite the Petitioner's request should be considered for grant of waiver.

12. For all the above reasons, Mr Pardiwala submitted that the impugned order should be set aside and that the Petitioner's application for waiver should be allowed.

13. Mr Suresh Kumar, learned counsel for the Respondents, defended the impugned order based on its reasoning. He submitted that the scope of judicial review in such matters is minimal. The findings of fact recorded in the impugned order

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1 [2015] 62 taxmann.com 37 (Allahabad)

were borne out from the material on record, and there was no case for granting any waiver.

14. Mr Suresh Kumar submitted that the Petitioner at one stage requested for the sale of the gold but soon thereafter requested that the sale be kept in abeyance. He pointed out how the Petitioner changed his mind repeatedly. He submitted that there was a finding about the value of gold and diamonds that were appreciated. He submitted that the pre-conditions for exercising powers under Section 220(2A) of the IT Act were not satisfied in this case.

15. For all the above reasons, Mr Suresh Kumar submitted that this Petition may be dismissed.

16. The rival contentions now fall for our determination.

17. The impugned order dated 28 February 2020 rejects the Petitioner's application for waiver of interest under Section 220(2A) of the IT Act. Section 220(2A) of the IT Act reads as follows: -

> "(2A) Notwithstanding anything contained in sub-section (2), the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by an assessee under the said sub-section if, he is satisfied that—
>
> (i) payment of such amount has caused or would cause genuine hardship to the assessee;
>
> (ii) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee; and

> (iii) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him:
>
> Provided that the order accepting or rejecting the application of the assessee, either in full or in part, shall be passed within a period of twelve months from the end of the month in which the application is received:
>
> Provided further that no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard:
>
> Provided also that where any application is pending as on the 1st day of June, 2016, the order shall be passed on or before the 31st day of May, 2017.
>
> (2B) Notwithstanding anything contained in sub-section (2), where interest is charged under sub-section (1A) of section 201 on the amount of tax specified in the intimation issued under sub-section (1) of section 200A for any period, then, no interest shall be charged under sub-section (2) on the same amount for the same period."

18. The above sub-section provides three conditions that must be fulfilled before the interest demanded on the tax due can be waived. The Hon'ble Supreme Court held that all these conditions must be satisfied in **B. M. Malani vs. Commissioner of Income Tax and another**[2].

19. The first condition is that payment of such an amount would cause genuine hardship to the assessee. In this regard, the Chief Commissioner has recorded findings of fact, and we are satisfied that no case of perversity is made out to interfere with the findings so recorded.

20. The Petitioner, in this case, was requested to produce his balance sheet to ascertain the Petitioner's financial position. However, the Petitioner claimed that he was not required to

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[2] (2008) 10 SCC 617

prepare any balance sheet. If the Petitioner had no balance sheet, then the Petitioner should have at least made full disclosures about his assets and liabilities through some acceptable material or documents. The contention that the Petitioner was not called upon to do so is entirely misconceived. Ultimately, the burden was on the Petitioner to show that the interest payment had caused or would cause genuine hardship.

21. The Petitioner, in his application dated 4 February 2019 seeking for waiver of interest, mainly stressed the fact that his securities, jewellery/bullion were seized on 26 July 2007, and they were not liquidated/encashed and disposed of despite repeated demands. The Petitioner submitted that this had caused him genuine hardship, and further, it is almost because of this singular factor that the Petitioner could not pay the interest. Mr Pardiwala contended that these were circumstances beyond the control of the Petitioner, and the fault lay with the department for not acceding to the Petitioner's repeated request.

22. The Petitioner's application, or rather the statements in the Petitioner's application, conceal more than what they reveal. For example, in the proportion of the tax and interest demand, the value of the investments was not very significant. What was important was the gold and diamond seized.

23. The Petitioner was far from consistent regarding the sale of the seized gold and diamonds. Though gold and diamonds were seized in 2007, until 20 September 2013, the Petitioner did not request the sale of gold bars or the appropriation of the proceeds for tax demands. Therefore, the claim that seized

gold and diamonds were not sold from 2007 onwards is not correct.

24. On 26 September 2014, after the tax demands were raised on the Petitioner, the Petitioner, by his communication dated 13 October 2014, informed the AO about the appeals instituted by the Petitioner and requested the AO not to dispose of the Petitioner's movable assets until the appeals instituted by the Petitioner were disposed of. This communication of the Petitioner is at Exhibit 'B-2' (pages 44 and 45 of the Petition).

25. Again, by communication dated 10 February 2015 (Exhibit 'B-3' at pages 47 to 49) the Petitioner once again informed the Deputy Commissioner of Income Tax that since his matters were before the Income Tax Appellate Tribunal ("ITAT"), the seized movable assets may be treated '*as security towards my tax dues and keep the matter in abeyance till I get the final order from Honorable I.T.A.T.*"

26. By further communication dated 13 March 2015 (Exhibit 'B-4' on pages 50 to 52), the Petitioner once again made the same request about keeping his movable assets as security towards his tax dues and to keep the matter in abeyance until the I.T.A.T. disposes of the proceedings.

27. Thus, it is not as if the Petitioner, at any stage, issued clear instructions regarding the seized gold. The instructions were conflicting and contradictory. Therefore, it is incorrect to portray a case in which the gold and jewellery seized in 2007 were not appropriated for the tax dues despite the Petitioner's repeated requests to do the same.

28. The impugned order refers to selling a flat jointly owned by the Petitioner and his wife. There is also a reference to the Petitioner paying taxes of Rs.91.83 lakhs, and there was no clarity about the sources. There was a reference to the Petitioner being the joint owner of Flat No.401, 4th Floor, Express Towers, Borivali, Mumbai-400092. There was a reference to agricultural income and other income. However, there was reluctance to disclose the proper sources.

29. Mr Pardiwala's contention that the above material was not presented to the Petitioner, thereby denying him an opportunity to explain, cannot be countenanced in the facts of the present case. Ultimately, it was for the Petitioner to make full and credible disclosures regarding his financial position. The Petitioner, by not filing a balance sheet or statement of assets, cannot still insist on having made out a case of genuine hardship.

30. The second condition that the Petitioner had to satisfy was that the default in the payment of the amount on which interest was paid or was payable was due to circumstances beyond the control of the assessee. The Petitioner made no such clear-cut case out.

31. The record shows that the Petitioner did pay a tax of Rs.91.83 lakhs. There was significant ambiguity about the sources from which the Petitioner arranged this amount. However, no case was made out that the Petitioner could not pay the taxes because the investments, gold and diamonds were seized in 2007. As noted earlier, the investments were not substantial in the tax and interest demand context.

Regarding gold and diamonds, the Petitioner went on changing his stand.

32. In paragraph 8 of the impugned order, the Chief Commissioner recorded a categorical finding that has not even been seriously challenged. The same reads as follows: -

> "8. *The assessee has taken a stand that due to delay in disposing off of the moveable assets particularly gold bars, his burden of interest u/s. 220 of the I.T. Act has increased. However, it is seen that the value of the assets seized in the form of Gold Bars and Diamond Jewellery got appreciated at a very fact pace and hence he got benefitted, instead of his claim of loss."*

33. The above finding of fact suffers from no perversity whatsoever. Not even any attempt was made by the Petitioner to show that there was any fall in the prices of gold bars or diamond jewellery. The Chief Commissioner has noted an appreciation for the value of gold bars and diamond jewellery at a very fast pace. Hence, the Petitioner benefited from this appreciation. Thus, based on the material on record, the finding of the Chief Commissioner about the Petitioner not fulfilling the second condition prescribed under Section 220(2A) of the IT Act warrants no interference.

34. The third condition requires that the assessee cooperate in any inquiry related to the assessment or any proceedings to recover any amount due from him.

35. Though there could be two opinions on this, the impugned order does refer to the inconsistent stands adopted by the Petitioner from time to time. At one stage, the assessee pleaded with the departmental authorities not to sell the diamond jewellery, claiming that the same was a part of

'Streedhan' though the CBDT guidelines had specified that diamond jewellery could not be treated as 'Streedhan'. Besides, about 500 grams of gold jewellery for each of the family members of the Petitioner's family had not been seized on the ground that the same must have been a part of their personal jewellery. There was a constant flip-flop on the sale of the seized bullion. The responses regarding sources of income were not very candid. Therefore, the Chief Commissioner's finding cannot be regarded as perverse.

36. The Chief Commissioner has also referred to circumstances like the Petitioner not paying any wealth tax or not filing returns of wealth up to Assessment Year 2015-2016, including the gold and jewellery seized and kept as security with the Income Tax department at the request of the Petitioner. Mr. Pardiwala did submit that the Petitioner was not required to pay any wealth tax. However, he did not elaborate as to why this was so. In any event, even if this aspect is excluded from consideration, still, there is no case made out to interfere with the well-reasoned order made by the Chief Commissioner of the Income Tax.

37. In this case, the Petitioner has failed to make out any case with the non-payment of the tax demanded in time was under circumstances beyond the control of the Petitioner. In this case, the Chief Commissioner has exercised the powers reasonably, and the feeble contention about violating natural justice lacks force. The Chief Commissioner has applied his mind to the relevant circumstances, and his approach cannot be considered unreasonable. The impugned order is reasoned, and the reasons cannot be considered irrelevant. Relevant material on record was considered. Even the factual findings

are supported by the material on records, and there is no perversity.

38. The decision in *Chander Prakash Jain* (supra) is based on peculiar facts that are not comparable to those in the present case. Besides, that case did not involve the exercise of powers under Section 220(2A) of the IT Act.

39. This Court does not exercise appellate jurisdiction in such matters. Considering the limited scope of judicial review, no case is made to interfere with the impugned order. As noted earlier, all three preconditions must coexist before a waiver order can be made under Section 220(2A) of the IT Act.

40. For all the above reasons, we see no merit in this Petition. This Petition is liable to be dismissed and is hereby dismissed. The Rule is discharged. However, there shall be no cost orders.

(Jitendra Jain, J) **(M.S. Sonak, J)**