

State of Rajasthan Vs. Income-tax Appellate Tribunal and anr.

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Court : Rajasthan

Decided On : Oct-23-2002

Reported in : (2003)179CTR(Raj)196; [2003]259ITR686(Raj)

Judge : S.K. Keshote and; F.C. Bansal, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 206 and 272A(2)

Appeal No. : D.B. Income-tax Appeal No. 69 of 2000

Appellant : State of Rajasthan

Respondent : income-tax Appellate Tribunal and anr.

Advocate for Def. : R.B. Mathur, Adv.

Advocate for Pet/Ap. : P. Mathur, Adv. for; V.P. Mathur, Adv.

Judgement :

S.K. Keshote, J.

1. The State of Rajasthan through Superintending Engineer, Irrigation Circle, Irrigation Department, Jaipur, filed this appeal under Section 260A of the Income-tax Act, 1961 (for short 'the Act, 1961'), against the order dated January 18, 1999, of the Income-tax Appellate Tribunal, Jaipur Bench, Jaipur, passed in I. T. A. No. 2029/JP of 1992, for the assessment year 1990-91 and the order dated December

22, 1999, of the Tribunal in the Review Application No. 16/JP of 1999.

2. As per the narration in the memo of appeal the facts of the case are that the appellant, Irrigation Department, Government of Rajasthan, mainly performing the duties and functions providing irrigation facilities and other infrastructure in the field of irrigation all over the State. A notice was served by respondent No. 2 to the appellant for the assessment year 1990-91 in regard to non-filing of annual TDS returns under Section 206 of the Act, 1961, in Form No. 24 of I. T. A. on reference made to it by the Income-tax Officer (TDS). Under the reference made by the Income-tax Officer (TDS) a proposal for the imposition of penalty under Section 272A(2) of the Act, 1961, was proposed. The contents of the notice are that the appellant has failed to submit annual TDS return in the prescribed Form No. 24 under Section 206 of the Act, 1961, thereby a delay of 460 days has taken place for the assessment year 1990-91 for which the due date was April 30, 1990. In response to that notice the appellant appeared before respondent No. 2. It filed detailed submissions. Respondent No. 2 decided the matter under its order dated January 17, 1992. The appellant was held guilty for non-filing of the TDS returns in limitation in the prescribed Form No. 24 under Section 206 of the Act and thereby imposed a penalty of Rs. 46,000. The appellant preferred an appeal against this order of respondent No. 2 before the Commissioner of Income-tax (Appeals), Rajasthan, Jaipur. It was registered as Appeal No. 1133 of 1991-92. The appeal came to be decided by the appellate authority and under its order dated October 26, 1992, the same was allowed and penalty imposed by respondent No. 2 was cancelled. Respondent No. 2 aggrieved by the order aforesaid of the Commissioner of Income-tax (Appeals), Jaipur, filed appeal before respondent No. 1 which was registered as I. T. A. No. 2029/JP of 1992.

3. The learned Tribunal decided the appeal on January 18, 1999. The same was allowed quashing and setting aside the order of the Commissioner of Income-tax (Appeals) and the order of respondent No. 2 was restored. The appellant filed a petition for review of the order dated January 18, 1999. The Tribunal dismissed the review petition on December 22, 1999. Hence, the appellant is before the court.

4. The appeal is barred by ten days. The appellant filed an application under Section 5 of the Limitation Act for condonation of this delay. The appeal was placed for preliminary hearing on board on May 16, 2002. On that day notices of the application under Section 5 of the Limitation Act were issued to the respondents returnable within four weeks. Reply to this application of the appellant filed under Section 5 of the Limitation Act is filed by respondent No. 2.

5. On September 9, 2002, it is noticed that by this appeal the appellant has challenged two different orders of the Tribunal, i.e., annexure 3 (dated January 18, 1999) and annexure 4 (dated December 22, 1999). Under the order dated January 18, 1999 (annexure 3), the Tribunal has decided the appeal. Vide its order dated December 22, 1999 (annexure 4), the Tribunal decided the review petition. The court held that the two orders cannot be challenged in one appeal. The appellant was directed to file separate appeal if he desires to challenge the order dated January 18, 1999 (annexure 3). The court has further directed the appellant to make necessary corrections in the appeal challenging the order dated December 22, 1999 (annexure 4). The appellant filed miscellaneous application for amendment/correction in appeal in compliance of the order dated October 21, 2002, aforesaid. In this application, the prayer is made that the appeal may be treated against the order dated December 22, 1999 (annexure 4) only.

6. Heard learned counsel for the parties on this application. The application is not opposed by learned counsel for the Revenue and rightly so as it is filed in compliance of the order of the court dated December 9, 2002. Accordingly, the application is allowed and the appeal is restricted only against the order dated December 22, 1999 (annexure 4). Endorsement of disposal of the application be made in red on the first page thereof.

7. Heard learned counsel for the parties on the application filed by the appellant for condonation of delay. Having gone through the contents of the application we are satisfied that delay of ten days occurred in filing of the appeal is satisfactorily explained by the appellant. Otherwise also this application is not seriously opposed by counsel for the Revenue and rightly so. Respondent No. 2 is an officer of the Central Government and it is not expected of him to oppose this application

and get the appeal of the assessee dismissed on this technical ground. Accordingly, the application of the appellant filed under Section 5 of the Limitation Act is allowed and the delay of ten days occurred in filing of the appeal is condoned. The application accordingly stands disposed of. An endorsement to this effect be recorded in red ink on the top of the application.

8. Learned counsel for the appellant submitted that the Tribunal has not considered the corresponding amendments which have been brought in Section 278A of the Act, 1961, by the Finance (No. 2) Act, 1991, with effect from October 1, 1991. Learned counsel for the appellant urged that the Tribunal has also not considered the provisions of Sections 273A and 273B of the Act, 1961. Lastly it is contended that the total amount of tax to be deducted at source was not exceeding Rs. 4,000. The appellant being the State, respondent No. 2 instead of penalising it for this default of non-filing of annual TDS return in Form No. 24, in time by its officer, the matter would have been referred to the Chief Commissioner of Income-tax, Rajasthan, Jaipur, for waiver of the penalty. This could have been done even after the order dated January 17, 1992.

9. Shri R.B. Mathur, per contra, submitted that the proviso which is inserted in Section 278A of the Act, 1961, by the Finance (No. 2) Act, 1991, is not applicable to the present case, i.e., the assessment year 1990-91. This provision has been brought into force with effect from October 1, 1991, and the default committed prior to this date is not covered.

10. As regards the other contentions raised by learned counsel for the appellant, Shri R.B. Mathur urged that the appellant, if so desires, could have approached to the Chief Commissioner of Income-tax, Rajasthan, Jaipur, for waiver of this penalty but that has not been done. The appellant has not given out any satisfactory, cogent and justified explanation for non-filing of TDS returns in time.

11. We have given our thoughtful consideration to the rival contentions raised by learned counsel for the parties.

12. In the case of Oil and Natural Gas Commission v. Collector, Central Excise [1991] 4 JT 158, their Lordships of the Supreme Court held that a petition by one

Department against another or public sector undertaking or State does not lie to this court unless certificate for filing the same has been given by the high level committee constituted by the Government. The apex court has observed that, inter se dispute of the State Government on the one side and the Central Government on the other side directly should not come to the court for its resolution. For resolution of their inter se disputes a High Power Committee is to be constituted. The courts are already heavily burdened with the work. The pending cases are waiting for their turn of hearing for more than 15 years. The State is the biggest litigant in the courts and for the inter se disputes of the State and the Union, as this case is, where the matters are not taken to the authorities under the Act and come to this court it is wastage not only of people's money in litigation but an additional burden to the court-work.

13. It is true that under the Act, 1961, the officer of the State Government may be under an obligation and duty bound to file TDS returns in Form No. 24 within the prescribed period. But where the default is made in filing thereof by the officer we do not find any justification in this approach of the Income-tax Department to give the notice straightaway treating the State as an ordinary assessee. We cannot be oblivious of the fact that out of this revenue received in the form of income-tax by the Central Government, possibly the States are getting their proportionate shares. The way and the manner in which this matter is dealt with by the Income-tax Department is suggestive of the fact that possibly it has been done for statistical purposes. The State should not have been dealt with by respondent No. 2 in this way, manner and fashion as what it is done in the present case.

14. Otherwise also having considered the matter with reference to the technicality of the law we find the action of respondent No. 2 wholly unwarranted, unexpected and undesirable. Rather to impose penalty for default made by the officer of the State in filing of the TDS return, the appellant would have been advised to approach the Chief Commissioner of Income-tax, Rajasthan, Jaipur, for the waiver thereof. After the order of levy of penalty instead of taking steps to recover the amount of penalty imposed, the attention of the appellant would have been drawn to the provision of Section 273A of the Act, 1961. Section 273B of the Act, 1961, is another provision relevant to the present case and that has also not been taken

care of. Section 273B of the Act, 1961, provides that notwithstanding anything contained in any provisions inclusive of Sub-section (2) of Section 272A no penalty is imposable on the person or the assessee, as the case may be, for any failure referred to in those provisions if he proves that there was reasonable cause for the said failure.

15. Sub-section (4) of Section 273A of the Act, 1961, provides that the Chief Commissioner of Income-tax or the Commissioner of Income-tax without prejudice to the powers conferred on him by any other provision of the Act, 1961, may, on an application made in this behalf by an assessee, and after recording his reasons for doing so, reduce or waive the amount of any penalty payable by the assessee under the Act, 1961, or stay or compound any proceeding for the recovery of any such amount if he is satisfied that to do otherwise would cause genuine hardship to the assessee, having regard to the circumstances of the case, and the assessee has co-operated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due, from him.

16. As per the provisions of Sub-section (4) of Section 273A of the Act, 1961, for this reduction or waiver of the amount of penalty it is open to the appellant to approach the Chief Commissioner of Income-tax or the Commissioner of Income-tax by an application.

17. Thus, in the facts of this case and keeping in view the ratio of the decision of the apex court in the case of Oil and Natural Gas Commission v. Collector, Central Excise [1991] 4 JT 158, we are satisfied that the interest of justice will serve in case this appeal is disposed of in terms that the recovery of the amount of penalty imposed shall remain stayed for six months or till the date the application of the appellant is decided by the Chief Commissioner of Income-tax, Rajasthan, Jaipur, whichever is later. In the meanwhile the appellant is free to apply for reduction or waiver of this amount of penalty to the Chief Commissioner of Income-tax, Rajasthan, Jaipur. The Chief Commissioner of Income-tax of Rajasthan, Jaipur, is to decide this application filed for reduction or waiver of the amount of penalty within a period of one month from the date of receipt of the application in this regard by the appellant. In case on the application filed by the appellant the order

of the Chief Commissioner of Income-tax, Rajasthan, Jaipur, goes adverse to the appellant, liberty is granted to it to apply for revival of this appeal by filing a simple note. The attention of the Income-tax Department is drawn to the decision of the apex court in the case of Oil and Natural Gas Commission v. Collector, Central Excise [1991] 4 JT 158 and it is expected in future such litigation may not directly come before this court. In case of default of the nature as what it is there in this case, the Income-tax Department may proceed in the matter in accordance with the provisions of the Act, 1961, but the order imposing penalty may not be given effect to and the assessee of this category be reminded of the provisions of Section 273A of the Act, 1961, and until the decision of the Chief Commissioner of Income-tax or the Commissioner, as the case may be, on the application.

18. The officers of the State Government, who are responsible for filing of the TDS returns are to be informed and made known that in case the delay is made in the submission thereof and the penalty is levied for their act or omission they shall be personally liable for the payment of amount of the penalty. It cannot be and shall not be the burden of the State Government. The State Government is not in any manner responsible for this delay. Where, delay is there certainly it would have been as a result of negligence, carelessness, inaction and omission on the part of its officer which cannot be taken to be an act in discharge of his official duty and thus the State Government cannot be vicariously made liable. The Chief Secretary of the State of Rajasthan is expected to make it clear to the officers of the State Government by issuing an appropriate circular, order or direction as the case may be.

19. In the facts of this case no order as to costs.