

Precot Mills Ltd. Vs. Central Board of Direct Taxes and ors.

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Court : Chennai

Decided On : Sep-17-1998

Reported in : (2004)191CTR(Mad)55; [2004]268ITR521(Mad)

Judge : R. Jayasimha Babu, J.

Acts : [Income Tax Act, 1961](#) - Sections 119(2) and 234C

Appeal No. : W.P. No. 14628 of 1994 and W.M.P. No. 22078 of 1994

Appellant : Precot Mills Ltd.

Respondent : Central Board of Direct Taxes and ors.

Advocate for Def. : Chitra Venkataraman, Adv.

Advocate for Pet/Ap. : Srinath Sridevan, Adv.

Disposition : Petition dismissed

Judgement :

R. Jayasimha Babu, J.

1. The petitioner has challenged the rejection of the application filed by it before the Central Board of Direct Taxes for waiver of interest on the sum of Rs. 3,62,042 being the amount by which the first instalment of advance tax paid by it on September 14, 1989, fell short of 20 per cent. of the tax liability for the year. The

assessee sought waiver of interest on the ground that the sum of Rs. 60 lakhs paid by it on December 14, 1989, was almost 50 per cent. in excess of the amount by which it was required to pay as the second instalment and the Government having had the benefit of that larger amount, had at the same time called upon the petitioner to pay interest for the period of three months from September 14, 1989 to December 13, 1989, under Section 234C of the Income-tax Act. The Central Board of Direct Taxes by its communication dated January 7, 1991, to the assessee did not set out any reasons for declining the request of the assessee but merely stated that it regretted its inability to intervene in the matter.

2. The assessee is a textile mill. It had become liable for tax for the assessment year 1990-91 by virtue of Section 115J of the Act as the book profits amounted to Rs. 6,37,04,956, 30 per cent. of that sum being Rs. 1,91,11,490 became taxable. The assessee paid a sum of Rs. 99 lakhs as tax in three instalments of advance tax, namely, Rs. 16 lakhs on September 14, 1989 ; Rs. 60 lakhs on December 14, 1989, and Rs. 23 lakhs on March 30, 1990.

3. Mr. Srinath Sridevan, learned counsel for the petitioner, submitted that the order of the Central Board Direct Taxes is illegal and arbitrary and requires to be set aside. It was submitted that under Section 119(2)(a) of the Act, the Board is bound to consider the case put forth by the assessee and after affording such opportunity as may be necessary to the assessee, make a reasoned order on the assessee's request ; that the power under that provision is a quasi-judicial power and that the reference to class of income or class of cases in Section 119(2)(a) includes individual cases, as a single case can also in certain circumstances constitute a class even for the purposes of Article 14 of the Constitution.

4. Reliance was placed by learned counsel on the decision of the Constitution Bench of the Supreme Court in the case of Lachhman Das v. State of Punjab, : [1963]2SCR353 , in support of the proposition that an individual can form a class if the case of that individual can be distinguished from others on a rational basis. An individual assessee, it was contended, can therefore constitute a class in respect of whom the Board can make an order under Section 119(2)(a) and grant relief.

5. Counsel also relied on the decision of the Punjab and Haryana High Court in the case of Sant Lal v. Union of India [1996] 222 ITR 375 wherein the court while upholding the Constitutional validity of Sections 234A 234B and 234C, observed that in a given case of an individual assessee or a group of assessees, the Board can, if it considers appropriate, exercise the power and grant relief from the provisions of Sections 234A to 234C of the Act. It was observed by the court that (headnote): 'In a given situation, a single case may constitute a class or a particular type of cases may constitute a special category. The Board may, in a given case, issue an order for treating an individual case as a class unto itself for the purpose of relieving an assessee of hardship.'

6. Reliance was also placed on the decision rendered by a learned single judge of the Karnataka High Court in the case of Union Home Products Ltd, v. Union of India : [1995]215ITR758(KAR) , wherein it was observed that the nature of the powers under Section 119(2)(a) appears to be more of a legislative character providing for the generality of the cases, or class of incomes. The court also observed that an individual case of hardship does not fall within the purview of Section 119(2)(a) of the Act. The appeal made by an individual assessee to the Board under Section 119(2) of the Act was characterised by the court as an appeal by a citizen to the law makers for prevention of hardship or inconvenience that may have been unintended ; or may become necessary in a given circumstance and the Board was therefore required to examine such request fairly and objectively and provide such remedies by relaxation or otherwise.

7. Counsel also relied on the decision of this court in W. P. Nos. 2528 and 2529 of 1997 and connected matters decided on December 13, 1993, wherein it was held that the power of the Board under Section 119(2) is quasi-judicial in nature and that any rejection of claim thereunder should be preceded by an effective opportunity to the assessee concerned.

8. Section 119 of the Act bears the heading : 'Instructions to subordinate authorities', and reads thus :

'119. (1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper

administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board :

Provided that no such orders, instructions or directions shall be issued--

(a) so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner ; or

(b) so as to interfere with the discretion of the Deputy Commissioner (Appeals) or the Commissioner (Appeals) in the exercise of his appellate functions.

(2) Without prejudice to the generality of the foregoing power,--

(a) the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions of Sections 139, 143, 144, 147, 148, 154, 155 Sub-section (1A) of Section 201, Sections 210, 211, 234A, 234B and 234C, 271 and 273 or otherwise), general or special orders in respect of any class of incomes or class of cases, setting forth directions or instructions (not being prejudicial to assesseees) as to the guidelines, principles or procedures to be followed by other income-tax authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information ;

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any income-tax authority, not being a Deputy Commissioner (Appeals) or the Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law ;

(c) the Board, may if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order for reasons to be specified therein, relax any requirement contained in any of the provisions of Chapter IV or Chapter VI-A where the assessee had failed to comply with any requirement specified in such provision for claiming deduction thereunder, subject to the following conditions, namely :--

(i) the default in complying with such requirement was due to circumstances beyond the control of the assessee ; and

(ii) the assessee has complied with such requirement before the completion of assessment in relation to the previous year in which such deduction is claimed :

Provided that the Central Government shall cause every order issued under this clause to be laid before each House of Parliament.'

9. Section 119(1) vests power with the Board to give orders, instructions and directions to other income-tax authorities 'for the proper administration of this Act.' The proviso imposes a bar on the Board interfering with the exercise of the discretion by the appellate authorities under the Act and also bars the Board from issuing directions to any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner.

10. Section 119(2) has three Clauses (a), (b) and (c). Clause (a) deals with the Board's power to issue from time to time general or special orders in respect of any class of income or class of cases 'by way of relaxation' of any of the provisions mentioned therein including Sections 234A, 234B and 234C, for the purpose of 'proper and efficient management of the work of assessment and collection of revenue'. The power under Section 119(2)(a) is therefore a power to be exercised for the purposes stated therein, namely, for efficient management of the work of assessment and collection of revenue. By exercise of that power, the provisions referred to in that clause may be relaxed.

11. Power of the Board under Clauses (b) and (c) in contrast to Clause (a) is meant to be exercised for the purpose of 'avoiding genuine hardship in any case or

in any classes of cases'. The power may be exercised under those two clauses only in respect of matters specified therein. The power under Clause (b) is limited to extending the time within which the assessee may make claims for exemption, deduction or refund or other relief and permitting the assessee to make such claim even after the expiry of the period specified in the Act.

12. Clause (c) permits the Board to relax any requirement contained in Chapters IV and of VI-A to enable an assessee or class of assessee to claim deduction provided therein. Chapter IV deals with computation of total income and includes therein Sections 14 to 59. Chapter VI-A deals with deductions to be made in computation of total income and comprises of Sections 80A to 80U. Where an assessee had failed to comply with any requirement specified in such provision for claiming deduction, the requirement may be relaxed by the Board subject to the conditions specified in Sub-clauses (i) and (ii) of Clause (c). The proviso thereunder requires the Central Government to cause every order issued under this clause to be laid before each House of Parliament.

13. Section 119 therefore does not vest in the Board unlimited powers to modify the provisions of the Act in its application to individual assesseees. Even an order permitting relaxation in any individual case or in a class of cases from the requirements of any provision in Chapter IV or of Chapter VI-A is required to be laid before each House of Parliament. Clause (b) of Section 119(2) confers limited power on the Board to extend the dead lines specified in the Act for performing various acts required to be done by the assessee for complying with the Act, in cases where the strict enforcement of those time limits would cause undue hardship.

14. The power under Clause (a) of Section 119(2) is a wider power and this power is not meant to be exercised on the ground of undue hardship having been caused to an individual assessee, as the Act is meant to be of uniform application and is not to be altered or modified to the needs of an individual assessee. The power conferred by Clause (a) is only to be exercised for the purposes specified therein and for no other purpose. The power under Clause (a) of Section 119(2) of the Act is a power to be exercised for the 'proper and efficient management of the work of

the assessment and collection of revenue'. The power conferred by this clause enables the Board to relax the provisions mentioned therein, but such relaxation is not to be merely for the purpose of granting relief to individuals who claims to have suffered undue hardship. Any relaxation that may be ordered by the Board must subserve the object of proper and efficient management of the work of assessment and collection of revenue. The power is to be exercised in respect of a clearly ascertainable class of income or class of cases. The decision to exercise or to refrain from exercising the power under Clause (a) of Section 119(2) is that of the Board because it alone is required to consider the necessity or expediency for the exercise of the power for the purposes mentioned therein. It does not confer a right on any individual assessee to compel the Board to exercise that power vested in it, in favour of the assessee.

15. This court in the decision relied on by counsel referred to Section 119(2), but did not notice the distinction between Clause (a) on the one hand and Clauses (b) and (c) on the other. The exercise of power under Clauses (b) and (c) is undoubtedly quasi-judicial as those clauses confer a right on the assessee to invoke the Board's power under these provisions. Clause (a) does not confer any such right on the individual assessee.

16. While it is always open to a citizen or to an assessee to bring to the notice of the Board, the existence of facts relevant to the exercise of the powers vested in the authority, that right cannot be elevated to the plane, where it could be asserted that the concerned assessee has a right to insist upon the Board exercising the power on a ground which may be special to that individual/assessee.

17. With great respect, I am unable to subscribe to the proposition upheld by the learned judge of the Punjab and Haryana High Court that the Board has a duty under Section 119(2)(a) to consider individual grievance and grant relief in individual case. There is no ambiguity in the language used under Section 119(2)(a). The intention of Parliament in confining the exercise of the power conferred under the Clause (a) only to a class of income or class of cases is made amply evident when the language used in Clause (a) is contrasted to that used in Clauses (b) and (c).

18. A general power conferred on the Board cannot by a process of interpretation be converted into a duty cast on the Board to entertain an application from any assessee who chooses to invoke the provisions, the Board being compelled to grant hearing to all such individuals and to make reasoned orders as if the Board were acting as a judicial or quasi-judicial body.

19. In this case, the assessee had complained of undue hardship and what the assessee regarded as injustice to which the assessee was subjected, by reason of the application of Section 234C of the Act. The Board has considered the representation made by the assessee and has informed the assessee that it was unable to intervene in this matter. The Board had not ignored the communication of the assessee. Having considered it, it has informed the assessee that the relief sought by the assessee cannot be granted. The Board was under no duty to grant relief to the assessee on the facts pleaded by the assessee.

20. The payment of a larger sum in the later instalment by the assessee was not on account of any compulsion imposed by the statute but was a purely voluntary act on the part of the assessee. The payment of a sum which was less than the amount which under the relevant provisions the assessee should have paid towards the earlier instalment, renders the assessee liable for the payment of interest. The Board apparently did not consider the application of the provisions as it stands to the assessee, as resulting in a situation where it adversely affected the proper and efficient management of the work of assessment and collection of revenue warranting the making of any general or special order by treating the assessee as a class by itself. The Board in fact has issued circulars which are meant to be applied to the class of income or class of asses-sees mentioned in that circular issued on May 21, 1996, relaxing the application of Sections 234A 234B and 234C. That circular is to be found in : [1996]219ITR169(Cal) . Thus, the Board has been mindful of its power vested under that provisions and has in fact exercised it in terms of the statutory provisions in respect of classes of assessees mentioned in that circular. That circular shows that it was issued for the proper and efficient management of work of assessment and collection of revenue, though the words of statutory provisions are not repeated therein.

21. In the result, no relief can be granted to the writ petitioner. The petitioner like all other assesseees to whom these provisions are applicable has to pay the interest required to be paid thereunder. Writ petition is therefore dismissed but in the circumstances there will be no order as to costs. Consequently, WMP is also dismissed.