Catholic Centre Vs. Pilot Pen Co. (India) (P) Ltd. (In Liquidation)

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Court : Chennai

Decided On : Jul-06-2004

Reported in : (2004)4CompLJ571(Mad); (2004)186CTR(Mad)562; [2005]63SCL553(Mad)

Judge : A. Kulasekaran, J.

Acts : Wealth Tax Act, 1957 - Sections 31(2); Income Tax Act, 1961 - Sections 156 and 220; Companies Act, 1956 - Sections 446(2) and 529A; Companies (Court) Rules, 1959 - Rule 9

Appeal No. : Company Petition Nos. 11 of 1978, 1756 of 2002 and 181 of 2004

Appellant : Catholic Centre;s. Dorai Raj;official Liquidator, High Court

Respondent : Pilot Pen Co. (India) (P) Ltd. (In Liquidation);official Liquidator and ors. ;chief Commissioner of

Advocate for Def. : Latha Perimala Vadhana, Asstt Official Liquidator, for Official Liquidator in CA No. 1756/2002

Advocate for Pet/Ap. : M.K. Kabir, Adv. for the applicant in CA 1756/2002;Pushpa Seetharaman, Standing Counsel

Judgement :

A. Kulasekaran, J.

1. Heard both sides. This application has been filed by the Official. Liquidator to direct the respondent to waive the penalty imposed by them onwealth tax under Section 31(2) of the Wealth Act and to dispose of the petition dated 23.5.2003 made before the respondent by the Official Liquidator.

2. The relevant provisions in Wealth Tax Act (27 of 1957) pertaining to the case on hand is Section 30 and 31 runs as follows:

'30. Notice of demand.--When any tax, interest, penalty, fine or any other sum ispayable in consequence of any order passed under this Act, the Assessing Officershall serve upon the assessee a notice of demand in the prescribed Form 380Aspecifying the sum so payable.

31. When tax, etc., payable and when assessee deemed in default.-

(1) Any amount specified as payable in a notice of demand under Section 30 shall be paid within thirty days of the service of the notice at the place and to the person mentioned in the notice:

Provided that, where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty days aforesaid is allowed, he may, with the previous approval of the Joint Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty days aforesaid, as may be specified by him in the notice of demand.

(2) If the amount specified in any notice of demand under Section 30 is not paidwithin the period limited under Sub-section (1), the assessee shall be liable to paysimple interest at one and one-half per cent for every month or part of a monthcomprised in the period commencing from the day immediately following the endof the period mentioned in Sub-section (1) and ending with the day on which theamount is paid:

Provided that, where as a result of an order under Section 23, or Section 24, or Section 25, or Section 26, or Section 27, or Section 29, or Section 35 the amount on which interest was payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded;

(2A) Notwithstanding anything contained in Sub-section (2), the Chief 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 hardshipto 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 be yond the control of the assessee; and (iii) the assessee has co-operated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

(3) Without prejudice to the provisions contained in Sub-section (2), on an application made by the assessee before the expiry of the due date under Sub-section(1), the Assessing Officer may extend the time for payment or allow payment byinstallments, subject to such conditions as he may think fit to impose in the circumstances of the case.

(4) If the amount is not paid within the time limited under Sub-section (1) or extended under Sub-section (3), as the case may be, at the place and to the person mentioned in the said notice, the assessee shall be deemed to be in default.

(5) If in a case where payment by installments is allowed under Sub-section (3),the assessee commits default in paying any one of the installments within the timefixed under that sub-section, that assessee shall be deemed to be in default as tothe whole of the amount then outstanding, and the other installment or installments shall be deemed to have been due on the same date as the installment actually in default.

(6) Where an assessee has presented an appeal under Section 23, the Assessing Officer may, in his discretion, and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default

in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains indisposed of.

(7) Where an assessee has been assessed in respect of assets located in a country outside India, the laws of which prohibit or restrict the remittance of money to India, the Assessing Officer shall not treat the assessee as in default in respect of that part of the tax which is attributable to those assets, and shall continue to treat the assessee as not in default in respect of that part of the tax until the prohibition or restriction of remittance is removed.'

3. The learned counsel appearing for the applicant brought to my notice that in earlier occasion, in respect of waiver of interest relating to income-tax, this court passed an order dated 04.10.2002 in the above Company Petition No. 11 of 1978, [see Catholic Center v. Pilot pen Co. (India) (P) Ltd. (in liquidation) (2004) 4 Comp LJ 565 (Mad)] wherein in paragraph No. 16 (at page 569 of Comp LJ), it was held thus:

'16 All the above decisions clearly show the power of the Company Court under Section 446(2)(b) of the Companies Act, 1956, which overrides any other law; more particularly, Section 220(2) of the Income-tax Act, 1961. The only restriction is that the court has to satisfy on the facts of a particular case that the claim for statutory interest under the Income-tax Act would amount to hardship, cause grave miscarriage and injury to the contributories. I have already referred to the particulars furnished by the applicant in the form of an affidavit. Paragraph 6 of the affidavit refers to actual/admitted due under Income-tax and interest claimed for the tax liability. It is not clear whether payment of tax was delayed by the Official Liquidator or the claim was not made by the Income-tax Department then and there. It is also to be noted that various proceedings were taken and as a matter of fact, certain matters are pending before the Tribunal/Court questioning the tax liability, interest, penal interest etc. I am satisfied that the interest component or the disputed liability has arisen due to no fault of the company. I am satisfied that in the facts and circumstances of the case that the claim for interest/penal interest for liability under Income-tax would amount to hardship, cause grave miscarriage of disputes [justice?] and injuries to contributories. Therefore, in the light of the factual details and in view of catena of judicial decisions, I am of the firm view that this is a fit and proper case where the claim of the Income-tax Authorities for interest/penal interest should not be allowed, as this court has ample power to waive under Section 446(2)(b) of the Companies Act, 1956, read with rule 9 of the Companies (Court) Rules, 1959.'

4. For the sake of convenience, it is also necessary to look into the provisions of Section 156 and Section 220 of the Income-tax Act, which as follows:

'156. Notice of demand.--When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form 1597 specifying the sum so payable.

220. When tax payable and when assessee deemed in default.--(1) Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under Section 156 shall be paid within thirty days of the service of the notice at the place and to the person mentioned in the notice:.....

(2) If the amount specified in arty notice of demand under Section 156 is notpaid within the period limited under Sub-section (1), the assessee shall be liable topay simple interest at one and one half per cent for every month or part of amonth comprised in the period commencing from the day immediately followingthe end of the period mentioned in Sub-section (1) and ending with the day onwhich the amount is paid:'

5. The said provisions in both Income-tax Act as well as Wealth-tax Act are identical. As contemplated under Section 529-A of the Companies, Act, the Official Liquidator has to first adjudicate the claims of workmen and the dues to the secured creditor and thereafter discharge all other debts, namely, revenues, taxes, cesses and rates due from the company to the Central or State Government of local authority as contemplated under Section 530 of the Act. Following the same, in this case, the Official Liquidator has adjudicated the claims of the secured creditors, which caused delay in paying the Wealth tax to the Authorities. The delay in payment of tax, on which interest was levied, is not due to the fault of the

company. Moreover, no details were furnished by the tax Authorities to show any demand is made. This court is vested with the powers to waive the claims like interest and penal interest in a fit and proper case. This is a fit and proper case to waive the interest demanded by the Authorities. Hence, I hold that the claim of the respondent in respect of interest is unsustainable in law. However, it is made clear that the Official Liquidator has to pay the amount of Rs. 68,65,681 towards tax component alone.

6. Mrs. Pushpa Seetharaman, learned standing counsel appearing for the respondent/Income-tax Department prayed this court to direct the liquidator to pay the said sum of Rs. 68,65,681 within a specified period.

7. Considering the facts and circumstance of the case, I direct the Official Liquidator to pay the Wealth tax liability of Rs. 68,65,681 to the respondent within a period of two weeks from the date of receipt of a copy of this order.

8. This application is ordered accordingly. No costs. Consequently, connected Company Application No. 1756 of 2002 is closed.