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

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Court : Chennai

Decided On : Oct-04-2002

Reported in : [2003]259ITR252(Mad)

Appeal No. : C.A. No. 1447 of 2001 in C.P. No. 11 of 1978 4 October 2002

Appellant : Catholic Centre

Respondent : Pilot Pen Co. (India) (P) Ltd. (In Liquidation) and ors.

Advocate for Pet/Ap. : M.K. Kabir, *for the Applicant* J. Nithyanandam, Legal Assistant to the Official Liquidator, *for the Respondent No. 1.* A.K. Mylsamy, *for the Respondent No. 2* Mrs. Elizabeth Seshad

Judgement :

P. Sathasivam, J.

A director of Pilot Pen Company (India) Private Ltd., the company under liquidation has filed the above application seeking a direction to the first respondent-official liquidator, High Court, Madras, to remit the admitted liability of Rs. 95,57,921 after waiving the demand for interest and penal interest claimed by various creditors.

2. In the affidavit filed in support of the above application, it is stated that the report of the official liquidator dated 1-11-2001, shows that totally a sum of Rs. 2,07,67,007 is due by the company to the various authorities enumerated therein

and the individual creditors. The factual position of the various amounts due to the department is as follows :

The demand for wealth-tax for the periods 1984-85 to 1992-93 is stated to be Rs. 59,49,151. The interest component claimed under section 31(2) of the Wealth Tax Act, 1957, for non-payment of the demand within 35 days thereof is stated to be Rs. 91,13,057. The total amount claimed is Rs. 1,50,62,248. The demand for income-tax for the periods 1972-73 to 1997-98 is stated to be Rs. 6,94,122. The interest component claimed under section 220(2) of the Income Tax Act, 1961, for non-payment of the demand within 35 days thereof is Rs. 6,89,087. The total amount claimed is Rs. 13,83,209. The official liquidator in his report dated 16-3-1999, has stated that he has paid a sum of Rs. 54,90,147 towards the tax.

It is further stated that when the wealth-tax demand is stayed by this court, the demand for interest is ill founded. Further, the demand for wealth-tax has been stayed and the income-tax demands are being contested, therefore, the company is not liable to pay any interest. Even the demands for property tax are subject to approval by this court.

The amount claimed towards property tax for the Anna Salai property is Rs. 12,94,403 calculated at the annual rental value of Rs. 75,686. For the property at Puzhal, the amount due for the periods 1/1987-88 to 1/1992-93 is Rs. 79,193 which has to be paid towards urban land taxAnna Salai, the total amount is Rs. 4,21,771. The demand by the department towards water tax and penal interest is Rs. 5,69,010. The total amount including penal interest towards commercial tax is Rs. 21,32,912. The total amount payable to unsecured creditors is Rs. 15,35,811. The total interest component/ disputed amount works out to Rs. 1,33,27,748 whereas the actual admitted amount is only Rs. 95,57,921. The fund position of the company as per the official liquidator's report dated 17-10-2001, in the bank account totalling in all Rs. 96,96,920.63. The said amount would suffice to pay the admitted or actual amount. The demand for payment of interest is not justifiable and is liable to be waived. The balance of convenience is in favour of waiving the demand for payment of interest. No prejudice will be caused to any person or authority if the same is waived.

3. Though the applicant has furnished details regarding property tax, urban land tax, water tax, commercial tax, etc., it is fairly stated that in this application he is questioning the demand for payment of interest/penal interest towards income-tax. It is stated that payment of interest on wealth-tax, does not arise now in view of the stay granted by this court. Mr. M.K. Kabir, learned counsel appearing for the applicant after pointing out that the income-tax actual/admitted due is Rs. 6,94,122 whereas interest claimed for the same is Rs. 6,89,087. He argued that the interest component or the disputed liability has arisen due to no fault of the company. There is no dispute that the company is under liquidation, and the entire assets are under custodia legis. He further argued that the official liquidator has reasons to contest the demand or not admit the claims, it will not give rise for the creditors to demand payment of interest or penal interest. In other words, according to him, the demand for payment of interest/penal interest is not justifiable and is liable to be waived.

4. Now, I shall consider whether this court has power to waive interest and the demand for payment of interest/penal interest is justifiable or liable to be waived as claimed

Before considering the said aspect, it is my duty to point out that though this court (E. Padmanabhan J.) has directed the official liquidator to engage a competent chartered accountant or income-tax practitioner or practising advocate to take out an application before the Commissioner of Income Tax for waiver of interest and other reliefs or modification to the earlier orders passed if any, the fact remains, no order has been produced before me in the application for waiver said to have been filed by the auditors representing the official liquidator.

5. Though Mr. J. Naresh Kumar, junior standing counsel for income-tax has relied on the judgment of the Supreme Court in the case of Imperial Chit Funds (P) Ltd. v. ITO : [1996]219ITR498(SC) to the effect that the Income Tax Department is a secured creditor, since the issue relates to waiver of interest/penal interest, I am of the view that except stating that the Income Tax Department is treated as a secured creditor, no further discussion is required.

Before going into various decisions cited by Mr. M.K. Kabir, learned counsel for the petitioner, it is also relevant to note that tax is due, and interest for the tax amount from the assessment year 1972-73 onwards. Section 156 of the Income Tax Act, 1961, speaks about notice of demand and section 220 speaks about when tax is payable and when the assessee is deemed in default. A Division Bench of this court in the case of S. Anthony Raj v. A. Shanmugam : (1995)IILLJ1208 Mad , has held that interest awarded by the single judge at the rate of 12 per cent was contrary to rule 156 of the Companies (Court) Rules, 1959, which puts a ceiling of 4 per cent on the rate of interest payable on debts by the company.

6. In the case of Official Liquidator, High Court, Calcutta v. ITO : [1981]130ITR790(Cal) , a learned single judge after referring to the provisions of the Companies Act, 1956, particularly in the winding up of a company and the Income Tax Act, 1961, has held that the power of the court (in the winding up of a company) under section 446(2)(b) of the Companies Act, 1956, overrides any other law particularly section 220(2) of the Income Tax Act, 1961. If the court is satisfied on the facts of a particular case that the claim for statutory interest under the Income Tax Act, 1961, would amount to hardship, cause grave miscarriage of justice and injury to the contributories, the court has power under section 446(2)(b) to disallow the department's claim for interest under section 220(2) on arrears of income-tax.

7. In the case of ITO v. Official Liquidator : [1982]138ITR136(Cal) , the Division Bench of the Calcutta High Court has held that the company court can override any other law, if the claim for interest would amount to hardship, cause grave miscarriage of justice and injury to contributories. They further held that, if the court is satisfied on the facts of a particular case that the claim for statutory interest under the Income Tax Act, 1961, would amount to hardship, cause grave miscarriage of justice and injury to the contributories, the court has power under section 446(2)(b) of the Companies Act, 1956, to disallow the department's claim for interest under section 220(2) on arrears of income-tax. After saying so, their Lordships rejected the claim of the income-tax authorities for the interest.

8. In the case of ITO v. Official Liquidator : [1986]158ITR791(Ker) , the dispute related to the claim for interest under section 220(2) of the Income Tax Act. After analysing the provisions from the Companies Act and the Income Tax Act, the court held :

'When the liquidator fails to make payment within 35 days of the service of demand notice on him, it cannot be said that he is a defaulter who is to be visited with the liability to pay interest under section 220 or even the penalty under section 221.'

They further held that, section 220 of the Income Tax Act cannot apply to a company in liquidation, which is governed by the provisions of the Companies Act.

9. In the case of S.V. Kondaskar, Official Liquidator and Liquidator of the Colaba Land and Mills Co. Ltd. v. V.M. Deshpande, ITO : [1972]83ITR685(SC) , the Constitution Bench of the Supreme Court has held that the liquidation court would have full power to scrutinise the claim of the revenue after income-tax has been determined and its payment demanded from the liquidator. They further held that it would be open to the liquidation court then to decide how far under the law the amount of income-tax determined by the department should be accepted as a lawful liability on the funds of the company in liquidation. They further observed that, at that stage the winding up court can fully safeguard the interest of the company and its creditors.

10. In the case of CIT v. Official Liquidator, Golcha Properties (P) Ltd, (In Liquidation) , the Division Bench of the Rajasthan High Court after referring to the provisions relating to winding up of a company under the Companies Act and its tax liability under the Income Tax Act held that, if the proceedings to be taken by the liquidator under section 178(3) of the Income Tax Act are taken out of the control and overall supervision of the company judge under section 446 of the Companies Act, then it would defeat the entire scheme of the Companies Act about the disbursement of the company's assets during the winding up proceedings.

11. 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 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 and injuries to contributories. Therefore, in the light of the factual details and in view of a 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.

12. In the light of what is stated above, the official liquidator is permitted to remit the admitted liability of Rs. 6,94,122 excluding the demand for interest and penal interest. It is made clear that the present order is confined to the demand for interest and penal interest in respect of income-tax liability of the company under liquidation. Company Application No. 1447 of 2001 is ordered accordingly.