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**(2013) 06 GUJ CK 0053**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 6826 of 2013

Amul Research and Development Association APPELLANT

Vs

Income Tax Officer RESPONDENT

**Date of Decision :** 17-06-2013

**Acts Referred:**

**Citation :** (2013) 262 CTR 49 : (2013) 359 ITR 549

**Hon'ble Judges :** Sonia Gokani, J;Mukesh R. Shah, J

**Bench :** Division Bench

**Advocate :** Deepak Shah and Tej Shah, for the Appellant; K.M. Parikh, for the Respondent

# Judgement

Sonia Gokani, J.—Present petition arises in the following factual background:

1. The petitioner is a registered trust under s. 12A of the IT Act, 1961 (hereinafter referred to as ''the Act'').

2. It is engaged in the activity of research for the improvement and preservation of environment, including watersheds, forests, etc. more particularly working for cows and buffaloes and for improvement of their life, fertility and yield of milk. The petitioner also enjoyed exemption under s. 11 of the Act for a long period. However, in the asst. yr. 2010-11, such exemption under s. 11 of the Act has been denied to the petitioner by the respondent vide his assessment order dt. 13th March, 2013, on the ground that the object of the trust was not charitable as defined under s. 2(15) of the Act.

3. A notice of demand dt. 13th March, 2013 under s. 156 of the Act along with notice under s. 274 r/w s. 271 of the Act came to be issued which was received by the petitioner on 20th March, 2013. The period of seven days was granted to the petitioner for payment of total sum of Rs. 1,41,07,755 (Rupees one crore forty-one lac seven thousand seven hundred fifty-five only) instead of statutory period of 30 days from the date of service of notice as prescribed under s. 220 of the Act.

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4. The petitioner preferred an appeal along with a stay application before the CIT(A) against such order passed by the respondent. However, in the meantime, the respondent recovered a sum of Rs. 1,39,70,275 from the bank account of the petitioner on 28th March, 2013. The notice under s. 226(3) of the Act and the letter substantiating such payment by the bank to the respondent is brought on record.

5. Aggrieved by such act of reduction of time period from 30 days to seven days and recovery of huge sum of Rs. 1,39,00,000 (rounded off), present petition under Art. 226 of the Constitution of India is preferred seeking the following reliefs:

7(a) quash and set aside the impugned notice dt. 13th March, 2013 at ''Annex. A to this petition;

(b) pending the admission, hearing and final disposal of this petition, to direct the respondent to refund the total amount recovered in respect of the impugned demand notice for Rs. 1,41,07,755;

(c) provide for cost of this petition;

(d) pass any other order(s) as this Hon''ble Court may deem to be fit and more appropriate in order to grant interim relief to the petitioner.

The learned senior advocate Shri Deepak Shah appearing with the learned advocate Shri Tej Shah for the petitioner vehemently made submissions assailing the order impugned of reduction of time period. He urged that the AO has power to reduce the statutory period of 30 days, if he has a reason to believe that it would be detrimental to Revenue if the entire period of 30 days is permitted to be availed by the assessee. Moreover, prior permission of the Jt. CIT is a condition precedent for reduction of any period under s. 220(1) of the Act. He further urged that the petitioner is a public charitable trust rendering yeoman service in the field of research work for the benefit of farmers, agriculturists and cattle. The petitioner also filed returns of income on regular basis and no occasion has arisen in the past for the officer to hold such a belief. He fervently submitted that such notice of demand has been issued on 13th March, 2013 and the assessment has been framed on 13th March, 2013 itself without any valid factual basis. Moreover, the approval of the Jt. CIT was also granted subsequent to issuance of such a letter, on 18th March, 2013 and, therefore, on none of the counts, such a notice is sustainable. He has relied upon the decision of the Delhi High Court in the case of Sony India Ltd. Vs. Commissioner of Income Tax and Addl. Commissioner of Income Tax, Range-9, and two decisions of the Bombay High Court in the case of Firoz Tin Factory and Another Vs. Assistant Commissioner of Income Tax 19, 20 and Others, as well as in the case of Rajasthani Sammelan Sarvoday Balika Vidyalaya and Another Vs. Assistant Director of Income Tax Exemption I (1) and Others, Reliance is also placed on the decision of the Division Bench of this Court in the case of Gujarat State Energy Generation Ltd. vs. Asstt. CIT, rendered in Special Civil Application No.

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3600 of 2013 and allied matters, decided on 6th May, 2013 [reported at (2013) 262 CTR (Guj) 44 : (2013) 93 DTR (Guj) 70 --Ed.], on merits in respect of registration under s. 12A of the Act. Also he urged that the decision of the apex Court in the case of Asstt. Commissioner of Income Tax Vs. Surat City Gymkhana, , which approved the decision of this Court in the case of Hiralal Bhagwati Vs. Commissioner of Income Tax, favours the petitioner.

2. Per contra the learned advocate Shri Parikh appearing for the Revenue has urged that it is the discretion of the AO to reduce the period prescribed under the Act. He has urged that the petitioner has already preferred an appeal against the demand notice issued under s. 156 of the Act and, therefore, when an effective alternative remedy has already been resorted to, the writ jurisdiction may not be invoked. It is further urged that for the asst. yr. 2010-11 all issues raised by the petitioner had been aptly dealt with and while framing the assessment, AO determined and computed total income of the petitioner to the tune of Rs. 3,36,06,368, as the exemption under s. 11(1)(a) of the Act was not granted since the petitioner has not carried any research activity. Against such order, the petitioner preferred Special Civil Appln. No. 9237 of 2012, which is pending before this Court. It is further argued on the line of affidavit-in-reply filed by the respondent AO that the statutory discretion in accordance with law has been exercised for reduction of period to protect the interest of the Revenue, for which the proviso to s. 220(1) of the Act has come into being. It is further urged that as per Note (3) of the impugned demand notice dt. 13th March, 2013, the assessee could have approached the AO but as he is not serious to pursue such remedy, his resort to writ jurisdiction may not be entertained at all. He requested the Court to dismiss the petition in limine.

3. Before adverting to the facts, at the outset the law on the subject deserves to be considered.

4. Sec. 156 of the Act contemplates notice of demand in respect of any tax, interest, penalty, fine or any other sum which reads as under:

156. When any tax, interest, penalty, fine or any other sum is payable in shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable:

Provided that where any sum is determined to be payable by the assessee under sub-s. (1) of s. 143, the intimation under that sub-section shall be deemed to be a notice of demand for the purposes of this section.

5. Sec. 220 of the Act prescribes that any amount other than the advance tax if is to be paid as per the notice of demand made under s. 156 of the Act, the period prescribed for such payment is 30 days from the date of service of notice. Proviso to such provision gives discretion to the AO, where he has reason to believe that giving full period of 30 days it would be detrimental to the Revenue, with a previous approval of the Jt. CIT, such period can be curtailed by him. The said provision requires to be reproduced profitably as under:

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220. (1) Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under s. 156 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 AO 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 Jt. CIT, 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.

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(3) Without prejudice to the provisions contained in sub-s. (2), on an application made by the assessee before the expiry of the due date under sub-s. (1), the AO may extend the time for payment or allow payment by installments, 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-s. (1) or extended under sub-s. (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.

6. Under this provision, not only the discretion is given to the AO to reduce the statutory period of 30 days by specifying the said period in the notice of demand itself, however, on an application made by the assessee, the AO also has a discretion to extend the time for payment or allow the payment by installment in the given facts and circumstances. And, only on the occasion of non-payment of such demand within the period prescribed in demand notice under sub-s. (1) or as extended under sub-s. (3) of this provision (s. 220) that the assessee is considered in default.

7. Sec. 222 of the Act prescribes for certificate to be issued by the TRO if the assessee is in default or deemed to be in default in making payment of tax. The TRO would draw a certificate under his signature which could be a statement in the prescribed format specifying the amount due from the assessee.

8. Sec. 226 of the Act prescribes that where no certificate has been drawn up under s. 222 of the Act, the AO may recover the tax by any one or more of the modes provided in this section. Sec. 226(3)(ii) of the Act contemplates a notice under this section to any person who holds or may subsequently hold any money for or on account of the assessee jointly with any other person and for the purposes of this sub-section, a copy of the notice has to be forwarded to the assessee as per the provision under s. 226(3)(iii) of the Act on the last address known to the AO or TRO. This provision also contemplates that any banking company, post office, insurer to whom such a notice is issued, is bound to comply with the same. It is the discretion of the AO or the TRO to amend or revoke such notice issued or extend the time for making payment in pursuance of such a notice.

9. The Bombay High Court in the case of Firoz Tin Factory (supra) was dealing

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with a case where the AO directed the assessee to pay the amount within seven days of the assessment order. An application was filed by the assessee inter alia contending that such shortening of the period was unnecessary as there was no detriment to the interest of the Revenue as the CIT had already levied a provisional attachment under the provisions of s. 281B of the Act. Such application was rejected by the CIT. In such circumstances, the Court held in favour of the assessee in the following manner:

5. Under the provisions of s. 220(1) it has been stipulated that any amount other than by way of advance tax specified as payable in a notice of demand under s. 156 shall be paid within thirty days of the service of a notice. The proviso to sub-s. (1) stipulates that where the AO has any reason to believe that it would be detrimental to the interests of the Revenue if the full period of 30 days is allowed, he may direct, with the previous approval of the Jt. CIT, that the sums specified in the notice of demand shall be paid within a period of less than 30 days. The proviso to sub-s. (1) of s. 220 is in the nature of an exception to the general requirement under the substantive part that an amount which is required to be paid in pursuance of a notice of demand has to be paid within 30 days of the service of notice. The exception which has been carved out by Parliament comes into operation if the AO has reason to believe that it would be detrimental to the interests of the Revenue if a full period of 30 days is allowed. This exception has been structured by a further requirement of the previous approval of the Jt. CIT. The exercise of the power to reduce the period under the proviso to sub-s. (1) cannot be exercised casually and without due application of mind. The question as to whether it would be detrimental to the interests of the Revenue to allow the full period of 30 days has to be addressed. The AO must, in the first instance, have reason to believe that the interests of the Revenue would be detrimentally affected by allowing a period of 30 days as stipulated in the statute. The Jt. CIT whose approval is sought before the AO reduces the period must similarly apply his mind to the issue of detriment to the Revenue. While granting his approval the Jt. CIT must record reasons. Those reasons as well as the approval which has been granted by the Jt. CIT must be made available to the assessee where a copy of the reasons is sought from the AO.

6. In the present case, as noted earlier, a provisional attachment has already been levied on 7th Oct., 2011 under s. 281B by which the amount which was invested by the assessee in mutual funds of SBI Mutual Funds was attached. The attachment was to the extent of Rs. 36.54 crores. That being the position evidently there would have been no basis for forming a reason to believe that if the period of 30 days was to be observed under s. 220(1), that would be detrimental to the Revenue. Merely because the end of the financial year is approaching that cannot constitute a detriment to the Revenue. The detriment to the Revenue must be akin to a situation where the demand of the Revenue is liable to be defeated by an abuse of process by the assessee. This is of course illustrative, for what is detrimental to the Revenue has to be determined on the facts of each case and an exhaustive catalogue of circumstances cannot be laid

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down. Consequently, we find that there is absolutely no justification for the AO for making an order of demand directing the assessee to deposit the entire demand by 16th March, 2012. The action is highhanded and contrary to law.

10. Yet another decision of the Bombay High Court in the case of Rajasthani Sammelan Sarvoday Balika Vidyalaya (supra) has been relied upon by the petitioner, where the assessee was deemed in default. The assessee, an exempt public charitable trust, was running educational institutions. On the ground that donations received by it were not voluntary, the assessment order was passed. The appeal was preferred before the CIT(A) and the application for stay of demand was moved before the AO. The AO while disposing of the stay application directed the assessee to make payment within three days without giving any reasons. Considering the fact that there were serious issues already contended before the CIT(A) with regard to continuity of exemption, the Court held that the Director of IT ought to have granted complete stay of demand.

11. The Division Bench of this Court in the case of Gujarat State Energy Generation Ltd. (supra) was considering the case where a notice was challenged on the ground that in terms of s. 220(1) of the Act though the assessee was entitled to a period of 30 days, the notice granted period of fortnight. In absence of any recorded reasons to believe that granting of full period of 30 days would be detrimental to the Revenue and in absence of previous approval of the Jt. CIT for curtailing such a period, the petition was allowed. On both the grounds i.e. (i) absence of any sufficient reasons to believe that granting full period of 30 days was detrimental to Revenue and (ii) as no prior approval of the Jt. CIT in writing was obtained, the essential requirements were not found to have been fully complied with. The Division Bench while upholding the petition held thus:

In the present case, we have serious doubt if the reasons recorded by the AO, though not referred to in the affidavit in reply, could be stated to be sufficient to enable him to believe that it was detrimental to the Revenue if the full period of 30 days was allowed. Further, admittedly, no prior approval of the Jt. CIT in writing was obtained. Mere discussion in a meeting of several high ranking tax officers chalking out certain action plan for timely recoveries would not, in our opinion, satisfy such a requirement which must be observed individually. By very nature of things, curtailing the period of 30 days and reducing the same for tax recovery by a shorter period would cause considerable inconvenience to the assessee. The Act does recognize the power of the AO to do so. Exercise of such power would be dependent on the reason to believe that it will be detrimental to the Revenue if the full period is allowed and further that he obtained prior approval of the Jt. CIT. Approval of the Jt. CIT, thus is an important safeguard and the manner in which it is stated to have been observed in the present case, is simply not sufficient compliance with such a requirement.

Additionally, we also notice that the petitioner is a Government company. There is nothing on record to suggest that if full period of 30 days was allowed, the petitioner would have defaulted or would have in any manner frustrated the

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recovery. Under the circumstances, we would have examined the question further and considered whether the period specified in the impugned notice should be tampered with. However, prima facie believing that, under the circumstances that we considering, notice under s. 156 thus may not be rendered ineffective, since it may be possible to argue that recovery notice under s. 156 can be severed from the period from which the sum demanded under such notice would become payable under s. 220(1) of the Act, we are not inclined to pass any further or final order in this respect. Additionally, as already noted, under the order of this Court, the petitioner did receive full period of 30 days and beyond for recovery and in the meantime, the AO himself passed an order staying recoveries.

12. In a matter before Delhi High Court in the case of Sony India Ltd. (supra), the AO had reduced the period of payment of tax demand. When it was challenged before the Delhi High Court, it was of the opinion that the belief of the AO must have a direct nexus to the conclusion that payment of tax would be detrimental to the Revenue and any suspicion in that respect is not the reason to believe. In absence of any material before the AO to believe that the demand would become irrecoverable or that it would be detrimental to the Revenue to allow the full period of 30 days, the order of reduction of period for payment of tax demand was set aside. It would be profitable to quote the relevant part of the decision as under:

After passing an order of assessment in accordance with the provisions of the Act, the AO is obliged to raise a demand in terms of s. 156 of the IT Act, 1961. Normally, the assessee would be granted a period of thirty days to discharge his liability of tax. The proviso to s. 220(1) vests a special power in the AO to reduce such period. The proviso to s. 220(1) is an exception to the rule and is not a rule in itself. No canon of statutory construction is more firmly established than that the statute must be read as a whole. The section must be read with its exception. To validly enforce his statutory discretion, the AO must have (a) relevant and valid reasons for forming a belief, and (b) the belief must have a direct nexus to the conclusion that grant of the full period of thirty days to the assessee for payment of tax would be detrimental to the Revenue. The reasons to believe of the AO should be relatable to the record on the file. It is not expected of the AO to record detailed reasons in the order but the formation of belief should be record based reason that grant of full period would be detrimental to the Revenue.

The expression ''reason to believe'' in common parlance would mean to have sufficient cause to believe. It is not synonymous with subjective satisfaction as it would be open to the Court to examine the matter whether ''reason to believe'' has a rational connection or a relevant bearing to the formation of belief. The belief must be held in good faith and cannot be merely pretence. It must be stronger than mere satisfaction. The belief entertained by the AO must not be arbitrary or irrational but should be reasonable and in other words it must be

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based on reasons which are relevant and material. Adequacy or sufficiency of reasons can hardly be investigated by the Court. Reasonableness, relevancy and good faith are factors which should be demonstrated in the order itself or at best the record in support thereof. ''Reason to suspect'' is not ''reason to believe''. They are terms of apparent definition and cannot be permitted to be interchanged in operation of fiscal provisions. Reasons are the link between the material on which the conclusions are based and they alone can exhibit how the mind is applied to the subject-matter for arriving at a decision. Rational nexus between the facts considered and conclusions reached is the main consideration. ''Reason to believe'' must relate to the standards of belief of a reasonable man and not to a prejudicial or biased mind.

13. Thus, it can be deduced from the above discussion that sub-s. (1) of s. 220 of the Act provides that any amount otherwise than advance tax as payable in the notice of demand to be issued under s. 156 of the Act, needs to be paid within 30 days of the service of the notice. However, the proviso to s. 220(1) of the Act gives discretionary powers to the AO to reduce such period. Two conditions are required to be fulfilled before the AO resorts to this exception of statutory period of 30 days. Firstly, he must have a reason to believe that the grant of full period of 30 days to the assessee for payment of tax would be detrimental to the interest of the Revenue and secondly, prior permission of the Jt. CIT requires to be obtained before such reduction in the period is made. Corollary to this issue is that the formation of the belief must be based on sufficient cause and grounds and the same must have connection with the conclusion that such availment of full period would be deleterious to the interest of the Revenue. The words "reason to believe" must have the same flavour as one finds in the case of exercise of powers by a reasonable man acting in good faith, with objectivity and neutrality based on material on record or exhibited in the order itself.

14. Coming to the facts of the instant case, the question would be whether both the conditions are duly satisfied in the case of the petitioner-assessee when the AO chose to exercise his discretion in curtailing the full period of 30 days.

15. The first and the foremost is the formation of belief on the part of the AO. As could be noticed from the record, in the letter addressed to the Jt. CIT dt. 11th March, 2013, prior to the framing of assessment following are the reasons given for proposal of reduction of period of 30 days as provided under proviso to s. 220(1) of the Act:

2. In the case of Amul Research & Development Association (ARDA), Amul Dairy Campus, Anand PAN: AAATA2673H for the asst. yr. 2010-11 the assessment under s. 143(3) is finalized and addition on account of s. 2(15) of the IT Act as the ARDA is no longer carrying out the charitable activities therefore, the assessee is no longer charitable in view of the revised provisions of charitable purpose and accordingly the trust is no more eligible for exemption under s. 11 r/w s. 12A of the Act from the asst. yr. 2010-11.

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3. The assessable income thus, (income over expenditure) worked out to Rs. 3,36,06,368 and demand likely to be raised is Rs. 1,41,00,000.

4. In respect of this ward there is a budget deficit, and to meet the budget deficit is requested to reduce the period of 30 days as per proviso to s. 220(1) of the IT Act, 1961. This should be viewed as need of Government and should be termed as detrimental to Revenue.

5. The net budget collection as on 31st March, 2012 of this ward was Rs. 1,07,27,252. The budget collection as per the data made available from the BCP (OLTAS), as on 5th March, 2013 collected Rs. (-)82,98,339 which is far below the budget target allotted to this ward. The CBDT, Chief CIT has directed to exceed the budget collection, compared to last year by making efforts to collect the current demand.

6. It is also discussed that the Anand Range, Anand is also running short of budget deficit, and to meet the budget deficit in a short span of time the every efforts is to be made by each of the officers.

7. The assessee having rich cash flow and there is probability that if the period of 30 days is reduced to be payable before 31st March, 2013, which may if paid by the assessee the budget deficit may be met and/or the target may achieved. In the above circumstances, AO has reason to believe that it will be detrimental to Revenue if the full period of 30 days is allowed, your honour is requested to kindly give approval for reducing the period of 30 days in the demand notice under s. 156 to 7 days.

16. The very reasonings are contrary to the very object of introducing proviso for giving discretion to the AO. They clearly and unequivocally indicate that the AO has completely misread the provision and his belief is neither of a reasonable man nor at all based on the rational connection with the conclusion of reduction of the period on account of the same being detrimental to the Revenue. It is the budget deficit which is the very basis for making such a formation of belief. Another reason given is that the assessee has a rich cash flow and if the period of 30 days is reduced, the budget deficit would be met with and the target set by the Department would be achieved in such circumstances. This is nothing but irrational use of powers conferred by the statute upon the AO. It is incomprehensible as to how such belief could be said to be reasonable and could have a nexus to the conclusion that the reduction would have detrimental effect to the Revenue. It is nowhere appearing from the communication that the worrisome past record and the poor performance of the assessee was made the basis for any apprehension on the part of the Revenue leading to formation of the belief that grant of full 30 days would not be in the interest of the Revenue. On the contrary, the strong financial condition of the petitioner is made the basis to fulfill the budgetary target and to make good budgetary deficit. This is nothing but an exercise of powers, without due application of mind. Permission has also been sought for curtailment of such period on 11th March, 2013. Yet another

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glaring aspect that needs to be recorded at this stage is that the assessment in the case of the present petitioner got completed on 13th March, 2013 and the impugned communication dt. 11th March, 2013 to the Jt. CIT is prior to framing of the assessment by the AO. Prior to framing final assessment, the AO made the proposal for reduction of the time period, stating therein that non-meeting of target of budget by the Revenue is the circumstance to be held detrimental to the interest of the Revenue. Approval of Jt. CIT is also granted approving such belief. Secondly, the approval of the Jt. CIT admittedly has come on 18th March, 2013. It is necessary to reproduce the grant of such request of reduction of period of 30 days issued from the office of the Jt. CIT, which reads as under:

2. In this connection approval is granted under s. 220(1) of the Act to shorten the period of payment of demand from 30 days to 7 days in the following five cases:

(i) Amul Research & Development Association asst. yr. 2010-11

(ii) Animal Breeding Research Organization asst. yr. 2010-11

(iii) Gujarat Environment Service Society (GESS) asst. yr. 2010-11

17. Prior to such communication of 18th March, 2013 by the Jt. CIT, the AO had already communicated the period of reduction on 13th March, 2013 itself by way of impugned notice. It is although a condition precedent to obtain the permission of the Jt. CIT. Admittedly, such permission has come subsequent to the communication of period of reduction in payment of tax, no reason comes forth as to what was such a great haste under which the AO has acted and conveyed such reduction without waiting for receipt of the approval of the higher officer.

18. As could be noted, the very object of obtaining permission of the superior officer is to ensure that the powers are not exercised arbitrarily and there is a safeguard of higher officer applying his mind independently to the issue in question when such belief is communicated by the AO. The curtailment of the statutory period of 30 days would surely cause inconvenience to the assessee which also restricts the period of challenge of assessee before exercise of such powers by the AO, the previous approval of the Jt. CIT has been made mandatory by law. This being "an important safeguard", as held in the case of Gujarat State Energy Generation Ltd. (supra), we are of the firm opinion that the reasons recorded by the AO cannot be held to be with due application of mind, much less reasonably sufficient for the curtailment of the full period so as to constitute the ground ''detrimental to the Revenue''. By no stretch of imagination, it can be said that non-meeting of the budgetary deficit could be a reason for holding reasonable belief that permitting the full period of 30 days for payment of tax would be detrimental to the cause of the Revenue. It is not such a situation where interest of Revenue is likely to be affected on account of any act of assessee. We are also in broad agreement with the decision of Bombay High Court that what would amount to detrimental to the Revenue is a matter of facts and would vary from case to case, however, such a situation must be

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apprehended on account of misuse of process that can be attributed to the assessee. If the demand is not likely to be defeated by any "abuse of process by the assessee", belief cannot be sustained on the ground that availing the full period would be detrimental to the interest of Revenue.

19. As could be pointed out from the record by the petitioner, the past performance all throughout of the petitioner-assessee was not such which would give rise to any apprehension in the mind of the Revenue so as not to allow the entire period. On the contrary, the very letter of the AO is self-evident that the "rich cash flow enjoyed by the assessee" would help him meeting the target of budget deficit and thus it can be concluded that the belief had neither any relevant or valid reasons and it also does not have any direct nexus to the conclusion of reduction of period. Both the authorities have acted without truly grasping the essence of use of this provision. Resultantly, the action of invocation of the discretionary powers under s. 220(1) of the Act shall have to fail.

20. Almost immediately after the Amendment Act was passed on 13th March, 2013, notice under s. 156 of the Act was issued by the respondent demanding sum of Rs. 1,41,00,000 (rounded off) reducing normal period of 30 days for payment and immediately on completion of seven days'' period, exercising powers under s. 226 of the Act, the respondent recovered a sum of Rs. 1,39,00,000 (rounded off) without granting any time to the petitioner.

21. Some of the vital issues raised while arguing this petition needs to be briefly dealt with. It was emphasised all along by the respondent that Note (3) of the notice of demand under s. 156 of the Act can permit the assessee to seek extension of time for payment of the amount, which in this case has not been done by the assessee. Secondly, he has already approached the CIT(A) against such action and, therefore, eventually if the CIT(A) holds in his favour, he would definitely get back the entire amount, which has been withdrawn from the bank. It is also denied that the notice issued under s. 226 of the Act to the assessee was after the sum of Rs. 1,39,70,275 had been withdrawn from the bank on exercise of powers under s. 226 of the Act.

22. As noted above while discussing the legal aspects, while issuing notice to the bank under s. 226(3) of the Act for making payment, a notice has also to be given to the assessee which in this case is on the very day when the notice was issued to the bank. No opportunity had been given to the assessee for meeting with such a notice issued to the bank. The sizeable amount of Rs. 1,39,00,000 (rounded off) has been withdrawn and deposited in the account of Revenue on the very same day. Notice was an illusory and empty formality. This arbitrary exercise of withdrawal of amount from bank also requires interference. Moreover, when the very action of the AO is held to be contrary to the provisions of the law, petitioner''s not resorting to Note (3) of the demand notice under s. 156 of the Act or his having resorted to an alternative remedy, is no bar to the Court exercising writ jurisdiction. Therefore, on none of these counts, the Revenue can be permitted to sustain the action of the AO of reduction of period of 30 days.

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Resultantly, this petition is allowed quashing and setting aside the impugned notice dt. 13th March, 2013, with a formal direction to the Revenue to refund the amount of Rs. 1,39,70,275 (Rupees one crore thirty-nine lac seventy thousand two hundred seventy-five only) by way of a cheque to be issued in favour of the assessee within two weeks on receipt of the present order.

This shall be subjected to the outcome of the order of appellate forum before whom the assessment is under challenge, with no order as to costs. Rule is made absolute to the aforesaid extent.

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