(2014) 03 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 3982 of 2012 (O and M)

Bal Keshan Dhawan APPELLANT

Vs

UOI and Others RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226 — Income Tax Act, 1961 - Section 119(2)(b), 139, 80AC, 80-IB

Citation : (2014) 03 P&H CK 0021

Hon'ble Judges : Ajay Kumar Mittal, J;Gurmeet Singh Sandhawalia, J.

Bench : Division Bench

Advocate : Avneesh Jhingan, Advocate, for the Appellant; Denesh Goyal, for the Respondent

Judgement

Ajay Kumar Mittal, J.?Challenge in this petition filed under Article 226 of the Constitution of India is to the order dated 27-7-2009, annexure P-6 passed by the Central Board of Direct Taxes (CBDT)--respondent No. 2 rejecting the application filed by the petitioner under section 119(2)(b) of the Income-tax Act, 1961 (in short, "the Act"). Direction has also been sought to respondent No. 2 to decide the application annexure P.5 on the merits and in the alternative, prayer for condoning the delay in filing the return has been made.

2. A few facts relevant for the decision of the controversy as narrated in the petition may be noticed. The petitioner was a Hindu undivided family (HUF) duly registered with the Income-tax Department. The Hindu undivided family was the proprietor of M/s. BKD Enterprises, Amritsar. After the death of Sari Bal Kishan Dhawan, Kapil Dhawan became the karta of the Hindu undivided family. The petitioner started a new industrial undertaking at Daman. The unit was set up in the assessment year 2004-05 which was eligible for deductions under section 80-IB of the Act. The petitioner filed the return for the financial year 2003-04, i.e., assessment year 2004-05 and claimed the deduction under section 80-IB of the Act with regard to the new unit at Daman for Rs. 7,65,258. The assessment was

finalized in scrutiny on 11-12-2006, and the claim of the assessee under section 80-IB of the Act was accepted. Similarly, the claim under section 80-IB of the Act for the assessment year 2005-06 was accepted. With regard to the assessment year 2006-07, the petitioner got its accounts of the unit audited and the same were filed with the Income-tax Department. According to the petitioner, since the information with regard to income from other sources was not ready, the return could not be filed up to the due date, i.e., October 31, 2006. There was a delay in filing the return and the same was filed on January 9, 2007. Since the claim under section 80-IB of the Act had been made in the return and the return was late as provided under section 139 of the Act, a show-cause notice was issued by the Department to the petitioner on November 19, 2008. The assessment was finalised, vide order dated January 10, 2008, annexure P.2 and the claim under section 80-IB of the Act was disallowed by holding that the return had not been filed within the stipulated period as provided under section 80AC read with section 139 of the Act. The petitioner moved an application dated April 2, 2009, annexure P-5 before the Board for condonation of delay. The said application was rejected by the Board, vide order dated 27-7-2009, annexure P.6. The Commissioner (Appeals), vide order dated 7-3-2011, annexure P.7 rejected the appeal holding that since the return had been filed late hence because of non-compliance with section 80AC of the Act the deduction had been rightly rejected. The assessee filed further appeal before the Tribunal. Vide order dated 16-12-2011, annexure P8, the Tribunal dismissed the appeal. Hence, the present petition by the petitioner-assessee.

3. Learned counsel for the petitioner submitted that the petitioner had submitted an application seeking condonation of delay in filing the return to the Board on 2-4-2009, under section 119(2)(b) of the Act. According to the learned counsel, the Board, vide order dated 27-7-2009, annexure P.6 had rejected the same. The said order does not satisfy the test of being a reasoned and speaking order. It was also urged that the Board had rejected the application on the ground that appeal was pending before Commissioner (Appeals) which is legally unsustainable.

4. On the other hand, learned counsel for the Revenue with reference to the reply submitted that the Board had rejected the application as the matter was pending before the Commissioner (Appeals) to whom no direction could have been issued for condonation of delay.

5. After hearing learned counsel for the parties, we find that the order of the Board is legally untenable.

6. The Hon''ble Apex Court in Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others, while dealing with the requirement of passing a reasoned order by an authority whether administrative, quasi-judicial or judicial, had laid down as under:

"51. Summarizing the above discussion, this court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect any one prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision making process as observing the principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or rubber-stamp reasons is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz

Torija v. Spain (1994) 19 EHRR 553 , at 562 para 29 and Anya v. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to article 6 of the European Convention of Human Rights which requires, adequate and intelligent reasons must be given for judicial decisions.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of due process."

7. It would be apposite to refer to the order of the Central Board of Direct Taxes dated 27-7-2009, annexure P.6 which reads thus:

"The applicant filed an application requesting the Board to invoke power under section 119(2)(b) and permit a belated claim under section 80-IB read with section 80AC. The assessee had not filed his return for assessment year 2006-07 before the due date and his claim of deduction under section 80-IB in the assessment year was disallowed in accordance with section 80AC of the Income-tax Act, 1961. The above disallowance made by the Assessing Officer is a specific order based on certain facts and interpretation of law. The order is also sub judice as the assessee has preferred an appeal against this order.

The Board has considered the above facts and has rejected the application as it is not a fit case for exercise of power under section 119(2)(b)."

Therefore, the order dated 27-7-2009, annexure P.6 does not satisfy the requirements of being a reasoned order as enunciated by the Apex Court noticed herein above. Accordingly, after setting aside the order of the Board dated 27-7-2009, annexure P.6, the matter is remanded to the Central Board of Direct Taxes to decide afresh after affording an opportunity of hearing to the parties in accordance with law by passing a speaking and reasoned order. 8 As a result, the petition stands disposed of.

