(2010) 02 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition No. 13797 of 2009

Dinakar Ullal	APPELLANT
Vs	
Commissioner of Income Tax	RESPONDENT

Date of Decision : 24-02-2010

Acts Referred:
Income Tax Act, 1961 — Section 119, 119 (2) (b), 237, 244 A (1), 244 A (2)

Citation : (2010) 232 CTR 83 : (2010) 323 ITR 452

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : A. Shankar and M. Lava, for the Appellant; M.V. Seshachala, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—The petitioner, a civil contractor assessed to Income Tax, filed a belated return of income on September 8, 1997, for the assessment year 1995-96 declaring income of Rs. 50,240 and claiming refund of Rs. 2,41,505 being tax deducted at source, though March 31, 1997, was the last date for filing the belated return u/s 139(4) of the Income Tax Act, 1961 (for short "the Act"). The delay of five months and seven days in filing the belated return was sought to be condoned by an application filed on September 21, 1998, invoking Section 119(2)(b) of the Act. In the first instance, the rejection of the petitioner''s application to condone the delay, by order dated January 8, 2007, of the Central Board of Direct Taxes for short the "Board", when called in question in W. P. No. 15441 of 2007, a learned single judge by order dated January 28, 2008 annexure D, quashed the order and remitted the proceeding for consideration afresh.

2. On remand, the respondent, exercising jurisdiction invested in him under Instruction No. 13 of 2006 dated December 22, 2006, in respect of claims up to Rs. 10,00,000, coupled with the direction contained in the letter dated March 28, 2008 of the Board, accepted the cause shown for the delay in filing the belated

return, but denied interest on the refund amount, in view of the condition set out in Circular No. 670 dated October 26, 1993 see [1993] 204 ITR (St.) 154, read with Instruction No. 13 of 2006 dated December 22, 2006, by order dated May 15, 2008 annexure A. Hence, this writ petition.

3. The petition is not opposed by filing statement of objections.

4. Learned Counsel for the petitioner submits that the Board exercising jurisdiction u/s 119(2)(b) of the Act issued Circular No. 670 dated October 26, 1993, authorising the Assessing Officer to consider application to condone the delay in filing a belated return subject to limitation on the amount of refund, while Instruction No. 13 of 2006, dated December 22, 2006, authorised the Chief Commissioner of Income Tax to consider applications for refund up to Rs. 10,00,000 subject to the "condition that no interest is admissible on the belated refund claim". Learned Counsel contends that such a condition denying interest on the belated refund claim is inconsistent with Section 244A of the Act providing for payment of interest on refunds. In other words, the instruction cannot override the provisions of the Act. It is next contended that the petitioner is entitled to interest on the refund amount of Rs. 2,41,505 from April 1, 1996, up to July 1, 2008, whence the said sum was adjusted against Income Tax dues of the petitioner for the assessment year 1994-95 onwards by the Income Tax Officer, Ward-I(3).

5. Per contra, learned Counsel for the respondent, while seeking to support the order impugned as being well-merited, fully justified and not calling for interference, contends that the circular/instruction being an external aid, imposing a condition denying interest on refund of belated claim while admitting an application to condone the delay, is for "proper administration of the Act", and hence neither destructive of the known principles of law nor overrides the provisions of the Act. It is next contended that Sub-section (2) of Section 244A applies to the facts of the case, disentitling payment of interest on refund since the proceedings relating to refund were delayed for reasons attributable to the petitioner.

6. Having heard the learned Counsel for the parties, perused the pleading and examined the order impugned, the following two questions arise for decision making:

(i) Whether the condition to deny interest on refund amount due to an assessee under the Act, while admitting an application to condone the delay in making a claim for belated refund u/s 237 of the Act, as contained in Instruction No. 12 of 2003 dated October 30, 2003 and 13 of 2006 dated January 22, 2006, of the Board, is inconsistent with Sub-section (2) of Section 244A of the Act ?

(ii) Whether in the facts and circumstances, the respondent was justified in denying interest on belated refund claimed for the assessment year 1995-96, by the order impugned ?

7. Section 237 of the Act provides for claim of refund of excess amount of tax paid by the assessee or on his behalf for any assessment year. The form of claim for refund and limitation are prescribed by Section 239 of the Act while delay in filing a belated return for refund claim in cases of genuine hardship could be condoned by the Board u/s 119 of the Act. Interest on refund is admissible under Sub-section (1) of Section 244A of the Act, while Sub-section (2) invests in the Chief Commissioner or Commissioner, a jurisdiction to deny interest for the period of delay in refund, for reasons attributable to the assessee.

8. The limitation to file a claim for refund in respect of the assessment year 1995-96, as in the case of the petitioner, was March 31, 1997, in accordance with Section 239(2)(c), as existing in the statute book, prior to the amendment by Act No. 18 of 2005. The petitioner''s claim when filed on September 8, 1997, was delayed by five months and seven days which was sought to be condoned by filing the application on September 21, 1998, invoking Section 119(2)(b) of the Act, showing sufficient cause.

9. Section 119, as existing prior to the amendment by Act 23 of 2004, reads thus:

119. Instructions to subordinate authorities.-(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- ...

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

10. A plain reading of the aforestated statutory provision, it is beyond cavil of doubt that, the Board is empowered from time to time to issue orders/ directions/ instructions to Income Tax authorities, as it may deem fit for proper administration of the Act, and more particularly under Clause (b) of Sub-section (2) of Section 119, for avoiding genuine hardship in any case, authorising any Income Tax authority to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified by or under the Act for making such application or claim and deal with the same on the merits, in accordance with law. The statute does not indicate vesting a jurisdiction in the Board to issue instructions in excess of what is stated in Section 119(2)(b). It is well-settled that instructions/circulars/guidelines are

binding to the extent they are not inconsistent with the provisions of the Act.

11. It is elsewhere said that the power of the Board is enlarged where the provisions of the Act bar the Income Tax authorities from entertaining any application for claim of any exemption, deduction, refund or any other reliefs due under the Act for the reason that the time limit specified for the making of such application or claim has expired. Thus, the Board is empowered to authorise the Commissioner of Income Tax Officer to admit such application or claim even after the time limit and to deal with it, in accordance with law.

12. In State of Madhya Pradesh and another Vs. G.S. Dall and Flour Mills and Others, , the apex court held that executive instructions can supplement a statute or cover areas to which the statute does not extend but they cannot run contrary to the statutory provisions or whittle down their effect. In Kerala Financial Corporation Vs. Commissioner of Income Tax, , following the opinion of Mukharji J. at paragraph 42 in State Bank of Travancore Vs. Commissioner of Income Tax, Kerala, , that circulars "cannot detract from the Act", the apex court held that a circular of the Board u/s 119 cannot override or detract from the Act inasmuch as, what Section 119 has empowered is to issue orders, instructions or directions for the proper administration of the Act or for such other purpose specified in Sub-section (2) of that section and that such an order, instruction or direction cannot override the provisions of the Act which would be destructive of all the Known principles of law as the same would really amount to giving powers to a delegated authority to even amend the provisions of the law enacted by Parliament.

13. Thus viewed, Section 119 authorises the Board to issue orders, instructions and directions to the Income Tax authorities "for proper administration of the Act". A circular is admittedly executive in character and has to be issued in aid of functioning of the Act and with the objective that, the provisions of the Act are properly administered. The Board may, in issuing a circular, clarify a point of ambiguity in any provision of law. Such clarification is not binding upon the courts. It cannot also run counter to the legislative provisions and create rights or obligations which are contrary to the statute. Instructions really supplant the law and not supplement the law. It is settled law that circulars cannot impose any burden on the taxpayer but can deviate from the provisions of the Act if it is beneficial to the assessee and has mitigated or relaxed the rigour of the law.

14. Section 244A of the Act provides for payment of interest on refunds and reads thus:

(Prior to the amendment by Act 54 of 2003)

244A. Interest on refunds.-(1) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely:...

(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by the Chief Commissioner or Commissioner whose decision thereon shall be final...

(4) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years.

15. It is thus clear that interest on refunds payable when an amount is due to the assessee under the Act is subject to exclusion of the period of delay occasioned and attributable to the assessee as may be decided by the Chief Commissioner or Commissioner of Income Tax whose decision is final. The statute compels the denial of interest on refund if the proceedings resulting in the refund are delayed for reasons attributable to the assessee. The provision is made applicable to assessments for the year commencing from April 1, 1989.

16. Having noticed the statutory provisions, indisputedly the Board in exercise of its jurisdiction u/s 119 of the Act. issued Circular No. 670 dated October 26, 1993 see [1993] 204 ITR (St.) 154, authorising the Assessing Officer to admit application to condone the delay in making a belated refund claim, arising as a result of tax deducted/collected at source and advance tax where such refund does not exceed Rs. 10 thousand up to Rs. 1 lakh with prior approval of the Chief Commissioner of Income Tax, for any assessment, year. Admittedly, there was no condition to deny interest on refund arising out of a belated claim.

17. The belated refund claim of the petitioner being Rs. 2,41,505 made on September 8, 1997, and an application September 21, 1998 to condone the delay of five months and seven days, was required to be considered and orders passed thereon by the Board within a reasonable time. However, the Board passed an order dated January 8, 2007, rejecting the application, which was rightly set aside in W. P. No. 15441 of 2007, and remitted for fresh consideration by order dated January 28, 2008.

18. Undoubtedly, the Board issued Instruction No. 12 of 2003, dated October 30, 2003, relating to procedure for dealing with application to condone delay in claiming refund, authorising the Chief Commissioner of Income Tax (CCIT) in respect of refund claim from Rs. 1 lakh to 5 lakhs, subject to denial of interest on the belated refund and that, however, the instructions would not cover cases prior to the assessment year 1996-97.

19. Yet again the Board issued another set of instruction bearing No. 13 of 2006 dated December 22, 2006, enhancing the consideration of refund limits up to Rs. 50 lakhs by the Chief Commissioner of Income Tax.

20. Therefore, in a proceeding to claim refund u/s 237, filed in time as prescribed by Section 239 of the Act, resulting in refund if delayed for reasons attributable

to the assessee, whether wholly or in part, the period of delay is to be excluded from the period for which interest is payable, as decided by the Chief Commissioner of Income Tax, as provided under Sub-section (2) of Section 244A of the Act.

21. So also in a proceeding to claim refund u/s 237 filed beyond the time prescribed by Section 239 of the Act, on the filing of an application invoking Section 119(2)(b) to condone the delay, and resulting in refund, is delayed for reasons attributable to the assessee, whether wholly or in part, the period of delay is to be excluded from the period for which interest is payable under Sub-section (2) of Section 244A of the Act.

22. Sub-section (4) of Section 244A makes the section applicable to assessments for the assessment year commencing from April 1, 1989. The substantive law relating to denial of interest on refunds in respect of belated claim, being fully covered by Sub-section (2) of Section 244A of the Act, it cannot but be concluded that, the Board, exercising a jurisdiction u/s 119 of the Act could not have issued instructions/orders/directions/ circulars, imposing a condition denying interest on refund, so as to supplement the law. Such a condition in derogation of the statute, is not "for the proper administration of the Act". That, condition by way of instruction contained in No. 12 of 2003 and 13 of 2006 overrides Sub-section (2) of Section 244A of the Act. and is in exercise of a power not vested in the Board, and hence inconsistent. The first question is answered in the affirmative.

23. There is no dispute over the fact that the petitioner''s belated claim for refund made on September 8, 1997, along with an application to condone the delay filed on September 21, 1998, was required to be considered by the Board u/s 119(2)(b) of the Act. In fact Instruction 12 of 2003, dated October 30, 2003 makes the instruction inapplicable to the belated claim for refund prior to the assessment year 1996-97. In other words, the condition denying interest on the claim for refund made belatedly, was not applicable to the petitioner''s application to condone the delay. The petitioner''s claim for refund of Rs. 2,41,505 was required to be considered by the Board on the basis of the law as it then existed and not on instructions subsequently issued authorising the Chief Commissioner of Income Tax, the respondent, based on enhanced limits of refund claim.

24. There is no material forthcoming from the order impugned that the proceedings resulting in refund were delayed for reasons attributable to the assessee so as to exclude the period from September 21, 1998, the date of filing the application to condone the delay in filing the belated return, up to July 1, 2008, whence the refund was adjusted against the petitioner''s Income Tax dues for the assessment year 1994-95.

25. Reliance placed upon the decision in Gujarat Electric Co. Ltd. Vs. Commissioner of Income Tax, by the assessing authority to deny the petitioner

interest on the refund claim by the order impugned, in my considered opinion, is without application of mind. I say so because their Lordships of the Gujarat High Court, having regard to the facts of the case, held that the Board was not justified in rejecting the claim for refund on the ground that a case of genuine hardship was not made out by the petitioner and delay in claiming the relief was not satisfactorily explained, more particularly when the returns could not be filed in time due to the ill-health of the officer who was looking after the taxation matters of the petitioner therein. Their Lordships further held that the phrase "genuine hardship" in Section 119(2)(b) of the Act should have been construed liberally. That decision is not in relation to denying interest on belated refund but a case of refusal to condone the delay in filing the belated claim for refund.

26. The order impugned in so far as it relates to denying interest on the amount of refund by merely following the conditions imposed in Circular No. 670 dated October 26, 1993 See [1993] 204 ITR (St.) 154, read with Instruction No. 12 of 2003 dated October 30, 2003 and 13 of 2006 dated December 22, 2006, is contrary to law, arbitrary and unsustainable. The second question is answered in the negative.

27. In the result, the petition is allowed in part. The order dated May 15, 2008 annexure A in so far as it relates to denying interest on Rs. 2,41,505 being the belated refund claim is quashed. The respondent is directed to calculate interest at the rate applicable during the period from September 21, 1998, up to July 1, 2008, after adjusting the same against, dues payable by the petitioner under the Act, pay the balance, if any, to the petitioner, in any event, within two months from the date of receipt, of a certified copy of this order.