

(1992) 11 KAR CK 0059
In the Karnataka High Court
Case No : W.A. No. 500 of 1992

H.S. Anantharamiah

APPELLANT

Vs

Central Board of Direct Taxes

RESPONDENT

Date of Decision : 04-11-1992

Acts Referred:

Income Tax Act, 1961 — Section 119 (2) (b)

Citation : (1992) ILR (Kar) 3608

Hon'ble Judges : K.A. Swami, Acting C.J.; N.D.V. Bhat, J

Bench : Division Bench

Advocate : K. Suman, for the Appellant; H. Raghavendra Rao and M.V. Seshachala, for the Respondent

Judgement

K.A. Swami, Ag. C.J.

1. At the stage of Preliminary Hearing, notice was ordered. Accordingly, the respondents have entered appearance through their learned Senior Standing Counsel Shri H. Raghavendra Rao. As the Appeal lies in a narrow compass, it is admitted and heard for final disposal.

2. This Appeal is preferred against the order dated 22nd November 1991, passed by the learned Single Judge in Writ Petition No. 19179 of 1990, Learned single Judge has rejected the Writ Petition, In the Writ Petition, the appellant-petitioner (assessee) has sought for quashing the order No. F.212/5/90- ITA.II, dated 17th July 1990, passed by the 1st respondent- The Central Board of Direct Taxes ("Board" for short), produced as Annexure-M in the Writ Petition. He has also sought for issue of a Writ in the nature of Mandamus directing the respondents to consider the case of the assessee and duly assess the return filed for the year 1985-86.

3. Learned single Judge has held that having regard to the Decision of this Court in John Shalex Paints (P) Ltd. V. The Central Board of Direct Taxes And Anr., the order dated 17th July 1990 passed by the Board is an administrative order, as

such it was not necessary to give reasons nor was it necessary to afford an opportunity of hearing to the assessee. It is also further held that the power exercised by the Board u/s 119(2)(b) of the Income Tax Act, 1961 ("Act" for short), is an administrative power and not a judicial or quasi-judicial power; therefore, it was not necessary to hear and pass a considered order.

4. The Points for Consideration are:

(i) Whether the power exercisable by the Board u/s 119(2)(b) of the Act, is an administrative power or a quasi-judicial power?

(ii) Whether it was incumbent upon the Board to afford an opportunity of hearing to the assessee before passing an order u/s 119(2)(b) of the Act?

4. Points Nos. (i) and (ii) may be considered together. The facts necessary for the purpose of deciding the aforesaid points are no more in dispute. The assessee (petitioner-appellant) filed a return for the assessment year 1985-86 with certain enclosures. That return was not filed in time. As there was a delay in filing the return, he made an application u/s 119(2)(b) of the Act, to the Board, to condone the delay in filing the return. The Board forwarded the application of the assessee to the Chief Commissioner of Income Tax (3rd respondent) with a covering letter dated 8th January 1990 requesting the Chief Commissioner to send the report within 15 days of receipt of the said letter, collecting the information indicated in Annexure-I annexed to the said letter. According to the respondents, this letter was also sent to the assessee whereas, according to the assessee no such letter was received by him. We need not go into this question because the letter addressed to the assessee did not call upon him to furnish the information contained in Annexure-I to that letter. The said letter addressed to the petitioner only stated thus:

"I am directed to acknowledge receipt of your petition dated the 29.12.1989 on the above subject and to say that the matter is receiving attention."

The rest of the paragraphs in the letter were not addressed to the assessee. It is also not in dispute that pursuant to the letter dated 8th January 1990, the Board received the communication dated 26.2.1990 sent by the Income Tax Officer, Ward-2(2), Bangalore, through the Chief Commissioner of Income Tax. It is not necessary to reproduce the said letter, "because a copy of the same was not furnished to the assessee nor the contents of it were in any manner brought to his notice. On the basis of the letter dated 26.2.1990, the Board intimated the assessee by its communication "dated 17th July 1990, produced as Annexure-M, stating that the Board has considered the application of the assessee and regrets its inability to accede to the request made by the assessee for condonation of delay in filing the return for the assessment year 1985-86.

4.1. The Point for Consideration is, when an authority under the Act, namely the Board, is required to exercise the power under the provisions of the Act, affecting the right of an assessee, whether it acts administratively or it performs a quasi-

judicial function. When the Board has to exercise power under the statute affecting the right of an assessee, such exercise of power cannot at all be considered to be an administrative power. In case the Board takes a view that the delay in filing the return cannot be condoned, the assessee becomes liable for ex parts assessment,

4.2. Section 119(2)(b) of the Act, reads thus:-

"(2) Without prejudice to the generality of the foregoing power:-

(a) xxx xxx xxx (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 Deputy Commissioner (Appeals) or 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."

Section 119 of the Act, empowers the Board to issue instructions to the subordinate authorities. Sub-section (1) of Section 119 provides that 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 the Act, and such authorities and all other persons employed in the execution of the Act shall observe and follow such orders, instructions and directions of the Board, provided that no such orders, instructions or directions shall be issued - (a) so as to require any Income Tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or (b) so as to interfere with the discretion of the Deputy Commissioner (Appeals) or the Commissioner (Appeals) in the exercise of his appellate functions. Thus, the Proviso to Sub-section (1) of Section 119 imposes certain restrictions on the powers exercisable by the Board under Sub-section (1) of Section 119. However, Sub-section (2) thereof, relaxes the conditions imposed by the Clauses (a) and (b) of the Proviso to Sub-section (1) of Section 119 on the power of the Board; because Sub-section (2) opens with the words "Without prejudice to the generality of the foregoing power", the Board may exercise power as per the provisions contained in Clauses (a) (b) and (c) of Sub-section (2). Thus, Sub-section (2) carves out certain exceptions from the limitations imposed by Clauses (a) and (b) of the Proviso to Sub-section (1) on the power of the Board, in Sub-section (2), Clauses (a) and (c) are not relevant for our purpose, as we are concerned only with Clause (b) which is already extracted above. Clause (b) of Sub-section (2) of Section 119 of the Act, enables, or empowers, the Board to admit an application or a claim or return filed after the expiry of the period specified, for avoiding genuine hardship caused in any case or class of cases. Thus, the statute makes it incumbent upon the Board to consider the case pleaded under Clause (b) of Sub-section (2) of Section 119 of the Act, by the Assessee, who files his return beyond time. This power has to be exercised by the Board and the Board alone and not by any other authority. It is not possible to hold that this power is

administrative when it relates to condonation of delay in a case where the return is filed beyond the period prescribed. The Board is required to exercise the discretion on taking into consideration all the relevant facts and circumstances and determine whether the delay in filing the return should or should not be condoned. The order must be informed by the reasons. It is not an arbitrary exercise of power. This power has all the traits of judicial power. Therefore, we are of the view that the power exercisable by the Board under Clause (b) of Sub-section (2) of Section 119 of the Act, is quasi-judicial in nature,

4.3. In M/s. John Shalex Paints (P) Limited, the question as to the nature of the power exercisable under Clause (b) of Sub-section (2) of Section 119 of the Act, is not considered. It is also not possible to hold that the said Decision holds, that the power exercisable by the Board is administrative in nature. When an authority discharges the quasi-judicial function, it follows without saying that it has to conform to the principles of natural justice. It has to afford an opportunity to the party who is going to be affected by the Decision of the Board. Therefore, the Board is required to afford an opportunity of hearing to the assessee either oral hearing or through submission of written arguments with reference to the points made against the assessee for not granting the relief sought for by him. In the aforesaid case of M/s John Shalex Paints (P) Ltd., in fact, the Board actually afforded oral hearing to the applicant there and also obtained the written arguments. In this regard, it has been specifically stated in the Judgment as follows:

"5. The learned counsel pointed out that no reasons had been assigned. In our opinion, when an application u/s 119 of the Act, is considered by the Board, the Board is not required to write an order recording reasons. What the Board, however, should do is to apply its mind to the merits of the case. In the present case, particularly having regard to the fact that oral hearing had been given and written arguments were also permitted to be filed, we are satisfied that the Board had applied its mind to the merits of the case and had rejected the application of the petitioner on merits."

Therefore, the aforesaid Decision also has proceeded on the basis that it is necessary to afford an opportunity of hearing to the applicant-assessee.

4.4. Shri Raghavendra Rao, learned Senior Standing Counsel for the Department, submits that as there will be several thousands of such applications, it will not be possible to afford personal hearing to each one of the applicants, therefore, the principles of natural justice would be satisfied if the points prevailing against the applicant are made known to him and his written arguments are obtained and the same are considered. Of course, such a procedure is not uncommon. It is followed in the case of revision petitions filed before the Central Government, under the Mineral Concession Rules. As long as the point held against the applicant is made known to him, and his say is obtained and the same is taken into consideration, the principles of natural justice are complied with. Therefore, having regard to the number of matters which would be received by the Board,

we are of the view that the aforesaid procedure would be just and expedient and would also be in conformity with the principles of natural justice. In the instant case, no opportunity whatsoever has been afforded to the assessee. His application for condonation of delay in filing the returns has been rejected on obtaining the information from the Income Tax Officer behind the back of the assessee. Therefore, we are of the view that the order (Annexure-M) cannot at all be sustained.

5. For the reasons stated above, the Writ Appeal is allowed. The order of the learned Single Judge is set aside. The Writ Petition is allowed. The order dated 17th July 1990 passed by the Board in No. F.212/5/90-ITA.II, produced as Annexure-M in the Writ Petition, is quashed. The Board is directed to consider the application of the assessee afresh in accordance with law and in the light of the observations made in this order.