

(1990) 11 KAR CK 0066

In the Karnataka High Court

Case No : Writ Petitions No's. 13525 and 13526 of 1986

John Shalex Paints (P) Ltd.

APPELLANT

Vs

Central Board of Direct Taxes and another

RESPONDENT

Date of Decision : 07-11-1990

Acts Referred:

Income Tax Act, 1961 — Section 119, 119 (2) (b), 139 (4)

Citation : (1993) 201 ITR 523

Hon'ble Judges : M.M. Mirdhe, J;M. Rama Jois, J

Bench : Division Bench

Advocate : K.S. Ramabhadran, for the Appellant; G. Chandra Kumar, for the Respondent

Judgement

M. Rama Jois, J.—The petitioner has presented these petitions questioning the legality of the order passed by the Central Board of Direct Taxes rejecting an application made by the petitioner u/s 119(2)(b) of the Income Tax Act.

2. The brief facts of the case are these : The petitioner is a private limited company. Its business is manufacture of paints. Commercial production commenced in the year 1974. Income Tax return were filed for the assessment years 1975-76, 1976-77 and 1977-78. The assessments were completed and huge losses were recorded. Thereafter, the assessee, on account of several problems which it face, could not file the returns for the assessment year 1978-79 to 1980-81. They were filed only during the assessment year 1982-83. Accordingly to sub-section (4) of section 139 of the Income Tax Act, the assessee was entitled to claim deduction of the losses carried forward from the previous assessment year, subject to the condition that the return was filed within a period of two years from the end of the assessment year. But, unfortunately, in this case, the petitioner could not file the returns within the period allowed. As a result, the tax liability for the assessment years 1982-83 came to Rs. 1,90,000. In the circumstances, the petitioner made an application before the Central Board of Direct Taxes u/s 119 of the Act. The said section empowers the Boards

to grant relief to assessees, if it is satisfied that any claim or application which was required to be made within the time prescribed under any of the provisions of the Act was not so done for good reasons and to relieve the assessee from hardship.

3. In the application, the petitioner explained the circumstances under which the returns could not be filed within two years from the end of the assessment year concerned as provided in sub-section (4) of section 139 of the Act and submitted that, as a result, the assessee had lost the benefit of the carry forward of the losses and, therefore, prayed that the Central Board of Direct Taxes be pleased to condone the delay in filing the returns and direct the Income Tax authorities to give the relief regarding carry forward losses. The Central Board, however, rejected the application by its communication dated June 26, 1986 (annexure-E). The relevant portion of the reads :

"I am directed to refer to your letter dated 27-4-1986 on the subject mentioned above and to say that the Board has considered your petition and regrets its inability to accede to your request."

4. Questioning the legality of the said decision, the petitioner has presented these petitions.

5. Learned counsel for the petitioner contended that though under sub-section (2) of section 119 of the Act, the Board is conferred with the power to grant the relief, the Board had declined to grant the same to the petitioner. In support of his contention, learned counsel relied on the judgment of this court in W. P. No. 41606 of 1982 Associated Electro Ceramics Vs. Chairman, Central Board of Direct Taxes and Another, In the said case, under similar circumstance, an application had been made by the petitioner therein u/s 119(2)(b) of the Act before the Central Board. The application was rejected by the Board on the ground that the Ministry of Law had given the opinion that the said provision did not confer power on the Board to condone the delay in filing returns under sub-section (4) of section 139 of the Act and that an application to give such relief could not be regarded as a claim for relief. The learned judge held that the language of section 119(2) of the Act was wide enough to give the relief sought for and quashed the endorsement and remitted the matter for reconsideration. Learned counsel would have been right in his submission if, in this case, the Central Board of Direct Taxes had rejected the petition of the petitioner on the ground that it had no jurisdiction to grant the relief which the petitioner had sought for at the hands of the Central Board of Direct Taxes. The Board in this case had given an oral hearing and had also permitted the petitioner to file written arguments and, after considering the merits of the case, the Board had rejected the application filed by the petitioner.

6. 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 an 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 the merits.

In the circumstances, we make the following order :

7. The writ petitioner are dismissed.