(2011) 02 AHC CK 0061

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 258 of 2005

J.S.D. Colonizers (P) Ltd. — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Income Tax Act, 1961 — Section 119(2), 139, 139(1), 139(4), 234

Citation : (2011) 3 ADJ 557

Hon'ble Judges : Yatindra Singh, J;Prakash Krishna, J

Bench : Division Bench

Judgement

1. The main question involved in this case is:

Whether the period, during which account books were seized by the income tax department (the Department), is unavoidable circumstance within the meaning of the notification dated 23.5.1996 (the Notification) issued by the Central Board of Direct Taxes (the Board) u/s 119(2)(a) of the Income Tax Act, 1961 (the Act), so as to entitle an assessee for the waiver of interest u/s 234A of the Act.

2. The aforesaid question arises out of the order dated 10.8.2004 passed by the Chief Commissioner of Income Tax, Ghaziabad (the CCIT) on the application for the waiver of interest under Sections 234A to 234C of the Act in respect of assessment years (AYs) 1990-91 to 1992-93.

THE FACTS

3. Sri Devendra Kumar Jain and Sri Subhash Chand Jain are partners in the firm M/s JSD Consultants (the Firm). They are also directors in M/s JSD Colonizers (P) Ltd (the Assessee).

4. A search took place on 14.2.1991 at the premises of the Firm as well as at the residences of its partners. In the search, accounts books and some other documents were seized. The head office of the Assessee is also in the same premises; and its accounts books were also seized.

5. The Assessee filed an application for obtaining the photostat copies of the accounts book and ultimately accounts books were given back on 13.4.1994.

6. The Assessee had neither filed the returns nor the advance tax for the relevant AYs; they were filed on 16.12.1994. The assessment orders were passed and interest under Sections 234A to 234C was also imposed.

7. Chapter XVII of the Act is titled ''Collection and recovery of tax''. It has different sub-chapters. Sub-chapter F is titled as ''Interest chargeable in certain cases''. Sections 234A to 234C of the Act are in this sub-chapter and provide charging interest for,

Defaults in furnishing return of income;

Defaults in payment of advance tax; and

Deferment of advance tax.

8. This interest, under the aforesaid Sections, can be waived, if the condition mentioned in the Notification are satisfied.

9. The Assessee filed an application on 3.6.1996 for waiving the interest in pursuance of the aforesaid Notification of the Board. This application was partly allowed by the CCIT on 10.8.2004.

10. The application of the Petitioner: except for part of AYs 1991-92 and 1992-93 u/s 234A of the Act: has been rejected. The summary of the order is given below in the tabular form.

AY

Due Date for filing Return

Under Section 234-A

Under Section 234-B

Under Section 234-C

1990-91

31.12.1990

Waiver rejected

Waiver rejected

Waiver rejected

1991-92

31.12.1991

Waiver upto 30.6.1994 was allowed

Waiver rejected

Waiver rejected

1992-93

31.12.1992

Waiver upto 30.6.1994 was allowed

Waver rejected

Waiver rejected

11. The Petitioner has filed this writ petition against the part of the order refusing to waive the interest.

POINTS FOR DETERMINATION

12. We have heard Sri RR Agarwal and Sri Suyash Agarwal, counsel for the Assessee and Sri Shambhu Chopra for the Department. The following points arise for determination.

(i) Whether the due date for filing return for AY 1990-91 was 31.12.1990 as held in the impugned order;

(ii) Whether the order, rejecting the waiver of interest for AY 1990-91 u/s 234A of the Act, is correct;

(iii) Whether the order, partly rejecting the waiver of interest for AY 1991 -92 and 1992-93 u/s 234A of the Act, is correct;

(iv) Whether the order, rejecting the waiver of interest for AY 990-91 to 1992-93 under Sections 234B and 234C, is correct.

1st POINT: DUE DATE: RIGHTLY HELD

13. The waiver of interest for AY 1990-91 was u/s 234A was rejected on the ground that due date for submitting the return was 31.12.1990 and the search was held after that date on 14.2.1991.

14. The counsel for the Petitioner submits that:

(i) The interest u/s 234A can be charged in case the return was filed after the due date;

(ii) The Petitioner could have filed his return for AY 1990-91 u/s 139(4) of the Act by 31.12.1992. This was the due date and not 31.12.1990;

(iii) The CCIT committed illegality in holding the due date for AY 1990-91 as 31.12.1990.

15. Chapter XIV of the Act is titled as ''PROCEDURE FOR ASSESSMENT Section 139 of the Act is in this chapter. It is titled ''Return of Income''. The word ''due

date'' was also defined in the explanation1 to Section 139(1) of the Act. In this explanation (as it existed at the relevant time), the word ''due date'', in respect of an assessee that is a company, meant the 31st day of December of that AY.

16. Section 139(4) of the Act merely provides the outer limit for filing the return. This does not mean that the date mentioned in Section 139(4) of the Act is the due date. The due date is provided in the explanation to Section 139(1) of the Act.

17. In our opinion, there is no mistake in taking 31.12.1990 as the ''due date'' for the AY 1990-91. However, there is a mistake in the order of the CCIT so far as it negates the waiver of interest u/s 234 of the Act in its totality.

2nd POINT: WAIVER APPLICATION u/s 234A FOR AY 1990-91: WRONGLY REJECTED

18. The CCIT has rejected the prayer for the waiver of interest u/s 234A of the Act for the year 1990-91. The search took place on 14.2.1991. Apart from other documents, the account books were also seized. They were returned on 13.4.1994.

19. It is correct that the Assessee did not file his return for the AY 1990-91 till 31.12.1990. However, he could have filed it after that date but could not do so from 14.2.1991 till 13.4.1994 as the account books were seized by the Department. This was unavoidable circumstance enumerated in the Notification for granting exemption.

20. In similar circumstances, a Division Bench of the Gujrat High Court (see below)2 held;

[T]he period during which the books of account had been seized by the income tax authorities should be the period for which the Petitioners should be given relief in the matter of payment of interest u/s 234A of the Act, as the Petitioners could not have filed their returns even if they wanted to file the same.

21. The account books of the Firm were also seized and were returned on the same dates as of the Assessee. Similarly, the Firm had also filed application for the waiver of interest. The CCIT passed the order on the Firm''s application on 10.8.2004. He has allowed the waiver application of the Firm for this period for AY 1990-91.

22. In view of above;

The aforesaid part of the order of the CCIT is incorrect;

The interest u/s 234A of the Act for the assessment year 1990-91 should be recalculated after excluding the period from 14.2.1991 to 16.12.1994.

3rd POINT: WAIVER ORDER u/s 234A FOR AY 1991 -92 & 1992-93--CORRECT

23. The CCIT has partly allowed the prayer for the waiver of interest u/s 234A of

the Act for the AYs 1991-92 and 1992-93. He has exempted the interest up to 30.6.1994 but has denied the same for the rest of the period.

24. It is not disputed that the entire records were returned to the Assessee on 13.4.1994. Thereafter a period of about three months was granted by the CCIT for filing the returns. It is for this reason that he has exempted the interest upto 30.6.1994.

25. In exercise of his discretion, the CCIT has granted more than two and half months for filing the return after receiving the accounts books. Nothing has been pointed out to us to show that the accounts of the Assessee were so complicated so as to require more time. In view of this, this part of the order of the CCIT cannot be faulted.

4th POINT: WAIVER ORDER u/s 234B AND 234C: CORRECT

26. The interest u/s 234B and 234C of the Act is charged for default in payment of advance tax and deferment of advance tax. The prayer of the Assessee for the waiver of interest for all the AYs was rejected. Is it legal?

AY 1990-91

27. The search in this case took place on 14.2.1991. It was after the accounting year (1.4.1989 to 31.3.1990) for the assessment year 1990-91. The advance tax should have been paid in the accounting year. No advance tax was paid. There was default as well as deferment under Sections 234B and 234C of the Act. In view of this, there was no illegality in rejecting the prayer for the waiver of interest under these Sections.

AY 1991-92

28. The advance tax in the case of the Petitioner was payable on 15th June, 15th July, 15th December, 15th March in instalments. Three instalments for AY 1991-92 (accounting period 1.4.1990 to 31.3.1991) fell before the search and only one instalment was left to be paid after the search. Yet, no advance tax was paid.

29. It is correct that the search took place in the AY 1991-92. However, the advance tax is paid on the estimated income. The Assessee had all the accounts prior to 14.2.1991 and after the accounts were seized he could very well estimate the income. In view of this, there is no justification for not depositing the advance tax. The order of the CCIT cannot be faulted.

AY 1992-93

30. The search took place prior to AY 1992-93. There is no question seizing any documents relating to this year. There is no justification on part of the Assessee in defaulting and deferring the advance income tax. There is no illegality in the order of the CCIT.

CONCLUSIONS

31. Our conclusions are as follows:

(a) The order of the CCIT in respect of waiver of interest u/s 234A for the AY 1990-91 is partly incorrect. The CCIT ought to have waived the interest for this assessment year from 14.2.1991 to 13.4.1994 during which the accounts were sized;

(b) There is no illegality in the order refusing to waive the interest u/s 234A after 30.6.1994 for the assessment years 1991-92 and 1992-93;

(c) There is no illegality in the order refusing to waive the interest u/s 234B and 234C for all the assessment years 1990-91 to 1992-93.

32. In view of our conclusions, the writ petition is partly allowed. The interest u/s 234A for AY 1990-91 for the period 14.2.1991 to 13.4.1992 be waived, while calculating the interest. With these observations, the writ petition is partly allowed.

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1 The relevant part of Explanation to Section 139(1) of the Act as it existed at the relevant time was as follows:

Section 139 : (1)....

Explanation.- In this sub-section, ''due date'' means:

(a) Where the assessee is a company, the (31st day of December) of the assessment year;

....

2 Paras Bansilal Patel Vs. B.M. Jindel or his Successor in Office,