
(2003) 11 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 17217 of 2003

Niranjan Dass

APPELLANT

Vs

Central Board of Direct Taxes Etc.

RESPONDENT

Date of Decision : 03-11-2003

Acts Referred:

Income Tax Act, 1961 — Section 119, 119(2), 239, 239(2)

Citation : (2004) 186 CTR 152 : (2004) 266 ITR 489 : (2004) 135 TAXMAN 422

Hon'ble Judges : J.S. Khehar, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Pankaj Jain, for the Appellant;

Final Decision : Dismissed

Judgement

J.S. Khehar, J.—The petitioner sought a refund of the tax paid by him. The request of the petitioner was declined by the Director, CBDT by an order dt. 6th June, 2003. A perusal of the aforesaid order reveals that the claim made by the petitioner being belated, did not satisfy the mandatory requirement of Section 239 of the IT Act, 1961 (hereinafter referred to as "the Act") and as such could not be entertained. Section 239(2) of the Act, which is relevant for the present controversy, is being extracted hereunder :

"Section 239. Form of claim for refund and limitation--(2) No such claim shall be allowed, unless it is made within the period specified hereunder, namely :

(a) where the claim is in respect of income which is assessable for any assessment year commencing on or before the 1st day of April, 1967, four years from the last day of such assessment year;

(b) where the claim is in respect of income which is assessable for the assessment year commencing on the 1st day of April, 1968, three years from the last day of the assessment year;

(c) where the claim is in respect of income which is assessable for any other

assessment year, one year from the last day of such assessment year."

A perusal of the aforesaid provision reveals that a claim for refund cannot be entertained unless it is made within the period specified. Learned counsel for the petitioner vehemently contends the despite the mandate of Section 239 of the Act. relaxation can be granted to the petitioner u/s 119 of the Act by instructions issued by the Board.

2. We have perused Section 119 of the Act, extracted in the writ petition. It is not possible for us to accept that the statutory provision incorporated u/s 239 of the Act, is amenable to relaxation at the hands of the Board through instructions u/s 119 of the Act.

3. In view of the above, we find no merit in this petition. The same is, accordingly, dismissed.

4. The instant order shall not affect any other remedy that may be available to the petitioner.