(2019) 05 CAT CK 0102

In the Central Administrative Tribunal

Case No : Original Application No. 1355, 1356 Of 2019

P.D. Kanunjna APPELLANT

Vs

Central Board Of Direct Taxes RESPONDENT

Date of Decision : 08-05-2019

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 153A, 153B

Citation : (2019) 05 CAT CK 0102

Hon'ble Judges : L. Narasimha Reddy, J;Aradhana Johri Member (A)

Bench : Division Bench

Advocate : Judy James, M.S. Reen

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. These two cases were initially filed in the Delhi High Court as WP(C) Nos.4128/2019 and 4129/2019 respectively. Through separate orders dated

26.04.2019, the High Court transferred the writ petitions to this Tribunal, and accordingly, they were numbered as OAs. In both the cases, the

applicants have challenged the memorandum dated 21.06.2018 issued to them.

2. The applicant in OA No.1356/2019 worked as Additional Commissioner, Central Range-2, New Delhi. A memorandum of charge was issued on

21.06.2018, alleging that he approved draft assessment orders u/s 153A/153B and 143(3) of the Income Tax Act, 1961, in respect of an assessee by

name K. Narasimha, without appreciating the evidence and facts available on record, and that the same amounts to lack of devotion to duty and

failure to maintain absolute integrity. In the statement of imputation, the manner in which the applicant approved the assessments and recoveries were effected from the assessee, were mentioned in detail.

3. The applicant in OA No.1355/2019 was issued charge memorandum dated 21.06.2018 with respect to his discharge of duties as Deputy

Commissioner of Income Tax, Central Circle-3, New Delhi. The allegations against him were also referable to the assessment orders in respect of the

said K. Narasimha. There again, the details were furnished in the statement of imputation.

4. The applicants raise four grounds in their OAs. The first is that the charge memoranda issued to them were approved by the Minister of State for

Finance (MoSF), and thereby there is a violation of the principles laid down by the Honâ??ble Supreme Court inU nion of India & others v B. V.

Gopinath& others [(2014) 1 SCC351]. The second plea is that the approval of the proposal was accorded by the Chairman, CBDT, and not by the

Minister of Finance. Thirdly, it is pleaded that there is a delay of ten years in initiation of the proceedings, and the same cannot be sustained in law.

Lastly, it is stated that the views of the applicants have already been ascertained before the initiation of the proceedings, and in that view of the

matter, the charge memoranda cannot be sustained in law.

5. We heard Ms. Judy James, learned counsel for the applicants, and Mr. M. S. Reen, learned counsel for the respondents, at the admission stage

itself.

6. The challenge in these OAs is to the charge memoranda. The allegations against the applicants are that they have failed to be attentive and did not

maintain integrity in the context of according approval to certain orders of assessments. The grounds as mentioned above are pleaded.

7. The scope for interference by a Court or Tribunal with a charge memorandum is very limited. In the ordinary course, the disciplinary proceedings

are required to be conducted in accordance with the procedure prescribed under the CCS (CCA) Rules, 1965, duly providing opportunity to the

concerned employee, at every stage. The occasion to interfere with the charge memorandum arises when -(a)it is issued by an authority not vested

with the power; and (b) when no misconduct can be perceived, even if the allegations contained in the charge memorandum are taken as true.

8. In the instant case, the applicants plead that the authority competent to approve and issue the charge memorandum is the Finance Minister, whereas

the impugned charge memoranda were approved and issued by the Minister of State for Finance (MoSF). Reliance is placed upon the judgment of the

Honâ??ble Supreme Court in B. V. Gopinathâ??s case.

9. It is true that in the judgment referred to above, the Honâ??ble Supreme Court held that if a charge memorandum is issued or approved by an

authority other than the one conferred with the power, the entire proceedings are vitiated. The appointing authority of the applicants is the President.

His powers are delegated to the Finance Minister. Within the Ministry, there is a `distributionâ?? as distinguished from the `delegationâ?? of powers

between the Finance Minister, on the one hand, and the MoSF, on the other. The MoSF does not act as a subordinate to the Finance Minister. The

powers exercised and functions discharged by him are on behalf of the Ministry, to the extent allocated to him. The applicants are under the

impression that the approval of the charge memoranda by the MoSF cannot be treated as the one, by the Finance Minister. That is totally incorrect

understanding of the matter. There is no element of sub-delegation of powers in this behalf.

10. In OA No.3909/2018 (Madan Mohan v Union of India) decided on 15.10.2018, this Tribunal has taken note of the allocation of powers between

the MoSF and the Finance Minister, and observed as under:

â??9. From this, it is evident that the allocation of powers between the Minister of Finance on the one hand and Minister of State for Finance, on the

other hand, were made. It is a matter of arrangement and allocation within the Ministry and by no stretch of imagination, it can be treated as sub

delegation. The power exercised by the Minister of State would be as good as it having been exercised by the Minister of Finance.â??

Therefore, the contention raised by the applicants in this behalf is rejected.

11. It is further pleaded that the approval for initiation of the disciplinary proceedings was accorded by the Chairman, CBDT. The basis for this plea is

that the proposal emanated from the Chairman, CBDT.

12. It is fairly well known that the proposal for any action or steps in a Department have to emanate from a lower stage, and the ultimate decision is to

be taken by the authority who is vested with the power. The issue cannot be straightway dealt with by the highest authority. The Chairman, CBDT did

nothing more than create a ground and place the relevant material before the competent authority. The approval of the note by him cannot be treated

as a final step in the decision-making process. It is not as if the charge memoranda were issued just on the basis of the approval of the note by the

Chairman, CBDT. On the other hand, his approval has only paved the way for taking the matter to the disciplinary authority.

13. The third contention is about the delay. Though it is advisable to initiate the proceedings against the employees soon after any illegality is

committed, many a time, the illegality itself is noticed long after it has taken place. The orders of assessment in question naturally have undergone

several stages, and the examination from the point of view of the lack of integrity or other such factors took place at a later point of time. Further, if

an element of fraud is noticed, the mere delay does not disentitle the Department to take action. The whole issue would be as to whether there was

any lack of integrity, or factors of similar nature, on the part of the applicants. We do not accept the contention raised in this behalf.

14. The other contention, such as the reply of the applicants being already on record, does not have the effect of annulling the disciplinary proceedings

initiated by the competent authority. The applicants can put forward all their contentions in the ensuing inquiry.

15. We do not find any merit in the OAs. The same are accordingly dismissed. There shall be no order as to costs. Â