

(2009) 05 DEL CK 0067
In the Delhi High Court
Case No : Writ Petition (C) 2237 of 1985

Prakash Tubes Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-05-2009

Acts Referred:

Citation : (2011) 330 ITR 561 : (2009) 180 TAXMAN 467

Hon'ble Judges : Vikramajit Sen, J;Rajiv Shakdher, J

Bench : Division Bench

Advocate : C.S. Aggarwal and Prakash Kumar, for the Appellant; R.D. Jolly, Senior Standing Counsel and Rani Kiyala, for the Respondent

Judgement

Vikramajit Sen, J.—This Petition under Article 226 of the Constitution of India seeks the issuance of a writ to waive the interest levied u/s 220 (2) of the Income Tax Act, 1961 (IT Act for short) pertaining to three consecutive years in respect of which the original Demand had already been paid. The Petitioner has contended that for the Assessment Years 1980-81, 1981-82 and 1982-83, the Revenue has raised a demand of Rupees 2,84,546/-, Rupees 6,95,479/- and Rupees 15,23,079/- respectively in regard whereof Demand Notices were served on 30.03.1983, 27.04.1983 and 27.04.1983 respectively. The Petitioner was under a bonafide belief that he was entitled to some additional relief under the unamended provisions of Section 80J of the IT Act. As a consequence it had moved the Hon"ble Supreme Court of India through a writ petition in the course of the hearing of which the operation and effect of the amended provisions of Section 80-J of the IT Act had been stayed. The Petitioner had also moved applications dated 08.04.1983 and 25.05.1983 for the stay of the aforesaid Demand; and the same was stayed by the Inspecting Assistant Commissioner vide his letters dated 12.04.1983 and 01.06.1983 for a period of six months. These interim orders were further extended till 31.03.1985 vide orders dated 11.01.1985. However, on 25.01.1985 the Hon"ble Supreme Court was pleased to dismiss the Writ Petitions, upholding the validity of the retrospective amendment

of Section 80-J of the IT Act. Mr. C.S. Aggarwal, learned Senior Counsel for the Petitioner, contends that the pending demands were thereupon paid on 4.3.1985. Subsequently, the Revenue issued a notice u/s 221(1) claiming amounts of Rupees 31,330/-, Rupees 1,06,761/- and Rupees 2,58,362/- ostensibly towards penalty although in the body of the notice Section 220 has been mentioned. Eventually, these demands were further raised to Rupees 46,889/, Rupees 1,19,410/- and Rupees 2,80,425/- chargeable u/s 220(2A) vide its Order dated 2.09.1985, indicating that the claim was towards interest.

2. The question posed before us is whether the Petitioner is entitled to waiver of the said interest u/s 220(2A) in light of the above mentioned facts; and whether interest can be levied without the service of a specific order raising the demand u/s 220(2A) of the Act together with a separate demand notice u/s 156 of the Act; and whether the impugned Order is liable to be set aside since the Assessee was not afforded any opportunity of personal hearing.

3. It has been contended on behalf of the Petitioner that inasmuch as interest has been charged for the period prior to 25.1.1985, till which date the interim Orders of the Supreme Court were effective, the demand is palpably illegal. The following Table will clarify the position:

Assessment Year

Amount Demanded

Paid on

Interest charged from

Amount (Rs.)

1980-81

2,84,546

4.3.1985

1.4.1983

46,887

1981-82

6,95,479

4.3.1985

26.5.1983

1,19,410

1982-83

15,23,079

4.3.1985

26.5.1983

2,80,425

This contention raised on behalf of the Petitioner has only to be stated to be rejected forthwith, as it is devoid of all merits. The Petitioner was one amongst several others who had challenged the vires or the retrospective operation of Section 80-J of the IT Act. This challenge was decided on 25.1.1985 in Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, . The opening sentence of this Judgment clarifies the controversy in these words - "These writ petitions raise an interesting question of law relating to the interpretation of Section 80J of the I.T. Act, 1961, and on the basis of certain interpretation, they challenge the validity of Rule 19A of the I.T. Rules, 1962, and also call in question the constitutionality of the retrospective amendment made in Section 80J, by the Finance (No. 2) Act, 1980". The contention is that in the interregnum when interim orders passed by the Court were in operation it insulated the Petitioner from all claims on account of interest.

4. It should not be forgotten that there is always a presumption in favour of the constitutionality or legality or validity of a statute. In the present case, this presumption was, in fact, eventually vindicated. There was no embargo or impediment, whatsoever, on the Petitioner to pay the assessed tax without prejudice to the outcome of its petition pending in the Supreme Court. Had that been done, it would have certainly removed and eradicated the liability for payment of interest. We find it legally preposterous to suggest that the liability to pay tax is not just postponed but is totally neutralized in the duration of interim orders. The argument that interest could not be charged till the dismissal of the writ petition (which coincided with the withdrawal of interim orders) is summarily rejected, it being devoid of merits. The following extract from Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others, clarifies the legal position -"....It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it is the duty of the court in such a case to put the parties in the same position they would have been but for the interim orders of the court. Any other view would result in the act or order of the court prejudicing a party (Board in this case) for no fault of its and would also mean rewarding a writ petitioner in spite of his failure. We do not think that any such unjust consequence can be countenanced by the courts. As a matter of fact, the contention of the consumers herein, extended logically should mean that even the enhanced rates are also not payable for the period covered by the order of stay because the operation of the very notification revising/enhancing the tariff rates was stayed. Mercifully, no such argument was urged by the appellants. It is understandable how the enhanced rates can be said to be payable but not the late payment surcharge thereon, when both the enhancement and the late payment surcharge are provided by the same

notification - the operation of which was stayed".

5. It has also been contended that before any interest can be claimed/levied, it must be preceded by a notice u/s 156 of the IT Act which stipulates that -"When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable ...". Section 220(2) of the IT Act prescribes that if the amount specified in any notice of demand u/s 156 is not paid within thirty days, the assessee shall be liable to pay simple interest at twelve per cent per annum. According to the learned Senior Counsel for the Petitioner, as has already been noted above, no demand for payment of interest had been served on the Petitioner. However, this argument flies in the face of the pleadings in paragraph 11 of the Writ Petition which read as follows:

11. The present petition is in respect of Assessment Years 1980-81, 1981-82 & 1982-83. Regular assessments in the said matter were completed on 30.3.83, 27.4.83 & 27.4.83 respectively and the demands of Rs. 2,84,456/-, Rs. 6,95,470 & Rs. 15,23,076/- were created. The demand notice in respect whereof were served on the assessee company on 30.3.83, 27.4.83 and 27.4.83 respectively.

The factual foundations are contrary to the case now projected on behalf of the Petitioner. *State of Kerala v. Joy Varghese* 1999 STC 657 has no application since Demand Notices have been served. In view of the extracted admission, we also consider it unnecessary at this late stage to investigate into the question as to whether or not the Demand Notices adhered to Form No. 7. Certainly, this precise objection has not been ventilated prior to the stage of final arguments. This submission is accordingly rejected.

6. We shall now consider the legal propriety of the impugned Order dated 2.8.1995 declining to waive the interest which reads thus:

Subject :- Waiver of Interest u/s 220(2A) of the Income Tax Act, 1961 - regarding

I am directed to refer to your petition No. NIL dated 1-3-85 on the subject mentioned above and to say that your petition has been considered by the Board. It is regretted that your request cannot be acceded to.

7. It is not in controversy that the Petitioner was not granted any hearing by the concerned authority prior to the passing of the impugned order. It has accordingly been contended by learned Senior Counsel for the Petitioner that there has been a serious breach of the broader and ubiquitously applicable principles of natural justice which would result in the impugned Order being completely vitiated. This argument is posited on *S.L. Kapoor Vs. Jagmohan and Others*, which decision indubitably continues to hold the field. On the other hand, the contention on behalf of the Revenue is that Section 220(2A), having been introduced into the IT Act with effect from 1.10.1984, has no bearing or applicability on Assessment Years 1980-81, 1981-82 and 1982-83 and hence the

Chief Commissioner did not possess the power to reduce or waive interest. The argument goes on to posit that since this is plain from a mere reading of Section, it was not considered necessary to grant a hearing to the Petitioner.

8. Since Mr. Aggarwal, learned Senior Counsel for the Petitioner, has laid substantial store on the decision of a learned Single Judge of the Calcutta High Court in *Apeejay Industries Ltd. Vs. Commissioner of Income Tax and Others*, , we shall deal with it in some detail. While immediately clarifying that Apeejay Industries is distinguishable on facts, it is our view that Section 220(2A) is substantive and not procedural law, and that it will be the law as was prevailing on the date of the demand for payment of interest that will govern the case. In other words, the Assessment Years in question will be irrelevant. In Apeejay Industries the learned Single Judge has opined that the actual demand stood crystallized on 19.12.1989 when the Assessing Authority had given effect to the Order of the Appellate Authority; which order must be deemed to be service of a demand notice u/s 156 of the IT Act; that interest u/s 220 would become payable after the expiry of thirty days from the passing of the Order, viz., 19.12.1989. In Apeejay Industries the Assessment Years 1973-74 and 1974-75 were in question. Nevertheless, the Court concluded that Section 220 (2A) was attracted obviously because the Assessment was open till 19.12.1989. In the case in hand, although the Assessment Years in question are 1980-81, 1981-82 and 1982-83, that is, prior to the date on which Section 220(2A) came into force, it would be the date on which the Assessment had crystallized that would be relevant. Inasmuch as Demand Notices were served on 30.03.1983, 27.04.1983 and 27.04.1983 for the three years in question, the said provision would not be available.

9. On behalf of the Petitioner reliance has been placed on *KISHAN LAL Vs. UNION OF INDIA AND ANOTHER.*, wherein their Lordships have enunciated the law in these words:

When an application is filed under Sub-section (2A) of Section 220 the authority concerned is called upon to take a quasi judicial decision. If it is satisfied that the reasons contained in the application would bring the case under Clauses (i) (ii) and (iii) of Section 220(2A) then it has the power either to reduce or waive the amount of interest. Even though in the said Sub-section it is not stated that any reasons are to be recorded in the order deciding such an application, it appears to us that it is implicit in the said provision that whenever such an application is filed the same should be decided by a speaking order. Principles of natural justice in this regard would be clearly applicable. It will be seen that a decision which is taken by the authority u/s 220(2A) can be subjected to judicial review, as was sought to be done in the present case by filing a petition under Article 226, this being so and where the decision of the application may have repercussion with regard to the amount of interest which an assessee is required to pay it would be imperative that some reasons are given by the authority while disposing of the application. Mr. Salve, the learned senior counsel for the appellant has strongly

relied upon the observations of this Court in *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, , where at page 986 it has been stated that where an authority makes an order in exercise of its quasi judicial function it must record its reasons in support of the order it makes. In other words, every quasi judicial order must be supported by reasons. In our opinion, the observations in that case would apply in the present case also.

10. The impugned Order would be indefensible in view of the above if Section 220(2A) was already in force and applicable to the case in hand. This provision was introduced into the statute with effect from 1.10.1984, before which date not only had the Assessment been framed, but even notices of demand had been served on the Petitioner. The *Kishan Lal* ratio, therefore, does not apply to the facts of the present case. This is also the answer ventured by Mr. Jolly what has been perceived by Mr. Aggarwal as a breach of the broad and ubiquitously applicable principles of natural justice, viz. failure to grant the Petitioner an opportunity of being heard.

11. We cannot ignore the fact that two decades have passed by since the manifestation of the present dispute. Despite the rigours set down in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , we are inclined to accept the argument of Mr. Jolly that a hearing was found unnecessary by the Authority since the provision sought to be invoked by the Petitioner, namely Section 220(2A), was not in force at the relevant time. A personal hearing would have been an imperative wherever and whenever discretion has to be exercised. Since this was not the case, no violation of natural justice has, therefore, occurred.

12. The Writ Petition is dismissed.