
(1996) 05 P&H CK 0196

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 748 of 1994, 27th May, 1996

SANT LAL

APPELLANT

Vs

UNION OF INDIA and Others

RESPONDENT

Date of Decision : 27-05-1996

Acts Referred:

Income Tax Act, 1961 — Section 234A, 234B

Citation : (1996) 134 CTR 581

Hon'ble Judges : G. S. Singhvi, J

Bench : Division Bench

Judgement

G. S. SINGHVI, J. :

These petitions are being decided by a common order because in all the petitions vires of ss. 234A, 234B and 234C of the IT Act, 1961 (hereinafter referred to as the Act) has been challenged and the petitioners have prayed for declaring these provisions to be ultra vires to the provisions of the Constitution of India. They have also prayed for quashing of the orders issued by the CBDT rejecting their prayer for waiver of interest, etc.

2. For the purposes of this order, it will be appropriate to make reference to a few facts from CWP No. 748 of 1994. Petitioner Sant Lal is partner of M/s Sankhon Wala Bros. which is carrying on business of gold at Sirsa. Search and seizure operations were conducted on the business and residential premises of the petitioner on 10th Feb., 1982. Cash amounting to Rs. 3,71,000 and gold ornaments/bullion worth Rs. 55,65,852 were recovered during the search and seizure operations.

Out of this, petitioner Sant Lal had share of Rs. 2,00,000 in cash and Rs. 4,00,140 in jewellery, etc. Gold worth Rs. 12,64,743 was released and the rest was seized. The petitioner says that immediately after the seizure was done he made an application to the Asstt. CIT to adjust the amount of tax due from the assessee. Further allegation of the petitioner is that in order to file return of the

income for the year 1988-89 he had made requests vide Annexures P2 to P7 to the Departmental authorities to make available all the copies of the statements recorded during the search operation and also to supply the copies of books/documents seized by the Department, but, respondent No. 3 did not pay any heed to the request made by the petitioner. Not only this, opportunity of inspection was also not given to the petitioner. Photostat copies of the material seized were made available in the year 1990, but, those were also incomplete. At the time of filing of the return, the petitioner is said to have given a detailed note indicating reasons for his inability to file return in time. The petitioner says that ignoring his request for return of documents and for adjustment of the amount seized during operation towards the tax, the assessing authority made provisional assessment and levied interest amounting to Rs. 5,80,884 under ss. 234A, 234B and 234C of the Act. Regular assessment was framed on 30th Dec., 1992 wherein interest was charged upto the period of making of assessment under s. 234B of the Act. The petitioner has challenged the vires of ss. 234A, 234B and 234C of the Act on the ground of arbitrariness. His contention is that prior to the insertion of these provisions, the competent authority had the power to reduce or waive the interest in accordance with the provisions of the statute but with the insertion of these provisions, no such power is left with the authorities and even the amount of interest has been enhanced from 15% per annum to 2% per month in cases of default in the payment of advance tax, deferment of advance tax or late filing of return. The petitioner has also contended that the impugned provisions are penal in character and, therefore, these provisions are beyond the legislative competence of Parliament. The petitioner further states that an application was submitted before the CBDT for waiver of interest, but, the Board has declined this request by a cryptic order dt. 22nd Oct., 1993. This order has been challenged on the ground of non-application of mind and violation of principles of natural justice.

3. The case set up by the respondents is that in respect of the asst. yr. 1989-90, order dt. 30th Dec., 1992 has been passed under s. 143(3) of the Act and now the matter is pending before the Tribunal. It has also been stated that the petitioner has already moved a petition under s. 245C(1) of the Act before the Settlement Commission and his application has been admitted by the Settlement Commission vide his order dt. 7th June, 1994. The respondents have pleaded that after having availed the alternative remedy, the petitioner cannot seek intervention of the Court for waiver or quashing of interest. On merits of the case, the respondents have pleaded that order for seizure was passed under s. 132(5) of the Act and the cash and valuables seized/recovered during the search operation have been retained in the custody of the Revenue and the same cannot be adjusted towards advance tax. The allegation of the petitioner regarding alleged highhandedness on the part of the Departmental authorities has been contested. The respondents have pleaded that the request of the petitioner for return of documents could not be accepted because the proceedings were pending against him and others. It has also been pleaded by the respondents

that there is no requirement of applying the principles of natural justice before passing order under ss. 234A to 234C of the Act and, therefore, orders passed by the authorities cannot be termed as arbitrary or unreasonable.

4. In his replication, the petitioner has denied the assertion of the respondents that appeal of the petitioner is pending before the appellate authority against charging of interest. According to the petitioner, the appeal has been filed against the deletion (addition) made by the Assessing Officer (AO) on other issue. The petitioner also says that pendency of settlement proceedings cannot be treated as an alternative remedy.

5. The first contention urged by Shri Aggarwal, learned counsel appearing for the petitioners, relates to the validity of ss. 234A to 234C of the Act. Learned counsel argued that prior to the insertion of these provisions, there existed a provision for waiver of interest in the cases of delay in filing of returns or non-payment of advance tax, but, under these provisions no such discretion has been left with any authority and, therefore, ss. 234A to 234C are liable to be struck down as being arbitrary and unreasonable. Learned counsel argued that even in a case like the present one where the delay in filing of the return has been occasioned due to circumstances beyond the control of the petitioner, the application for waiver of interest has not been entertained showing that an absolute curb has been imposed on the exercise of power by the competent authority to waive interest. Learned counsel submitted that levy of interest contemplated by these provisions is punitive in character and, therefore, ss. 234A to 234C of the Act are liable to be struck down. He placed reliance on a decision of Gujarat High Court in *Income Tax Bar Association and Another Vs. Chief Commissioner of Income Tax and Others*, and on a decision of Calcutta High Court in *Guru Nanak Estates and Another Vs. Commissioner of Income Tax and Others*, .

Shri Sawhney, learned counsel for the respondents, relied on a decision of Karnataka High Court in *Union Home Products Ltd. Vs. Union of India and another*, and argued that newly inserted provision of ss. 234A to 234C of the Act are not penal in nature merely because they impose higher rate of interest. Learned counsel submitted that mere hardship in a given case cannot be a ground for declaring the provisions of the statute to be arbitrary or unconstitutional. Shri Sawhney submitted that the provision of interest continues to be compensatory in character and merely because the mode of collection has been changed, it cannot be termed as arbitrary or unreasonable. Shri Sawhney further argued that mere absence of a provision empowering the authorities of the Department to waive interest in a situation of extreme hardship cannot render the provisions unconstitutional.

6. Secs. 234A to 234C of the Act have been inserted in the Act w.e.f. 1st April, 1989. Prior to this provisions contained in ss. 139, 215 and 216 of the Act occupied the field. Sec. 139(8) provided levy of simple interest at the rate of 15% per annum in case of failure of the assessee to furnish the return by the specified date, but, the proviso to that section empowered the AO to reduce or

waive the interest payable by the assessee under sub-s. (8) of s. 139. Sec. 215 also provided for levy of interest at the rate of 15% per annum where the advance tax paid by the assessee was found to be less than 75% of the assessed tax. Sec. 216 provided for levy of simple interest at the rate of 15% per annum in the cases covered by ss. 209 or 212 or 213 of the Act. Secs. 234A to 234C replaced old provisions as is evident from the Direct Tax Laws (Amendment) Bill, 1987. A plain reading of the statement of objects and reasons incorporated in the bill shows that a committee was constituted by the Parliament for simplification and rationalisation of direct taxes. The committee took into consideration the views of the Members of Parliament, economists and industries apart from those expressed by few taxpayers. On the basis of the recommendations of the committee, the Bill was introduced with a view to provide mechanism for simplification of law and procedure relating to the direct taxes. One of the objects behind the Bill was to remove the uncertainty in the matter of assessment by cutting down areas of subjective decisions of taxing authorities with a view to ensure uniform treatment to the persons similarly placed and to reduce litigation because it was felt that the existing provisions gave unlimited discretionary powers to the assessing authorities to levy different penalties and interest for similar default. Therefore, the Government thought it proper to replace the existing system by introducing a provision of mandatory interest to compensate the Government for the loss of revenue. No doubt, one of the purposes sought to be achieved by the new provisions is to deter the assesseees from repeatedly committing defaults, but, only on that ground it is not possible to hold that the impugned provisions are penal in character.

At this stage, we may refer to the decision of the Supreme Court in *Khazan Chand and Others Vs. State of Jammu and Kashmir and Others*, . That was a case in which the provisions of the J&K Sales-tax Act providing for enhancement of interest from 12% to 36% per annum were called in question on the ground that the imposition of such a high rate was per se arbitrary and, therefore, unconstitutional. Repelling the argument, the Supreme Court held that even though interest at the rate of 2% per month and particularly the rate of 3% per month can be said to be on the higher side yet it was difficult to appreciate how the imposition of such a higher rate of interest would make the provisions void or unconstitutional. The following observations of the Supreme Court are apposite :

"The second part of the challenge under Art. 14 was with respect to the rates at which interest is payable under sub-s. (2) of s. 8 on the amount of tax paid after the expiry of the prescribed date of payment. It is true that the rate of 2%, per month and particularly the rate of 3% per month can be said to be on the high side, but we fail to see how this would render the provisions of that sub-section void or unconstitutional. Providing for payment of interest in the case of delayed payment of tax is a method usually adopted in fiscal legislation to ensure that the amount of tax which is due is paid by the prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing statute. It is for the State to provide by what means payment of tax is to be enforced and a

person who does not pay the amount of tax lawfully and admittedly due from him can hardly complain of the measures adopted by the State to compel him to pay such amount. It neither lies in the defaulters mouth to protest against the rate of interest charged from him nor is it open to him to dictate to the State the methods which it should adopt for recovering the amount of tax due by him."

In *Central Provinces Manganese Ore Co. Ltd. vs. CIT* (1986) 160 ITR 691 the Supreme Court was considering the nature of the levy of interest under ss. 139(8) and 215 of the Act. It was held that even though called penal interest, the levy under these two provisions was only compensatory in nature. The following passage from the judgment speaks out the logic behind that view :

"At the very outset, it is necessary to consider the nature of the levy of interest under sub-s. (8) of s. 139 and under s. 215. It is not correct to refer to the levy of such interest as a penalty. The expression penal interest has acquired usage, but is in fact an inaccurate description of the levy. Having regard to the reason for the levy and the circumstances in which it is imposed, it is clear that interest is levied by way of compensation and not by way of penalty. The IT Act makes a clear distinction between the levy of a penalty and other levies under that statute. Interest is levied under sub-s. (8) of s. 139 and under s. 215 because, by reason of the omission or default mentioned in the relevant provision, the Revenue is deprived of the benefit of the tax for the period during which it has remained unpaid. The very period for which interest is levied under the relevant provision points to the nature of the levy. If that is borne in mind, it will be apparent that the levy of interest is part of the process of assessment."

In *Ganesh Dass Sreeram Vs. Income Tax Officer, "A" Ward, Shillong and Others*, their Lordships of the Supreme Court referred to some of the earlier decisions and held :

"It is submitted by learned counsel appearing on behalf of the appellants that as, in view of the late filing of the returns, there is postponement of the payment of tax and the Revenue suffers loss on account of delayed payment of tax, the interest when levied takes the character of penalty. This contention need not detain us long, for it has already been decided by this Court in *Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income Tax*, that interest is levied by way of compensation and not by way of penalty. In *Commissioner of Income Tax, Andhra Pradesh Vs. M. Chandra Sekhar*, also this Court has taken a similar view. The High Court, however, has taken the view that the interest charged partakes also of a penal character. In expressing that view, the High Court has placed reliance upon a decision of this Court in *Jain Bros. and Others Vs. The Union of India (UOI) and Others*, . In that case, this Court was mainly considering a challenge to s. 271(2) of the Act, which is a penal provision, on the ground of contravention of Art. 14 of the Constitution. The question whether charging of interest under the proviso to s. 139(1) of the Act was in the nature of penalty or not, was not considered by this Court. Indeed, the subject matter was different from that with which we are concerned. In view of the decisions of this

Court in Chandra Sekhars case (supra), and in the case of Central Provinces Manganese Ore Co. Ltd. (supra), we hold that the charging of interest did not become transformed into penalty."

In Union Home Products Ltd. vs. Union of India (supra) a learned Single Judge of the Karnataka High Court examined various facets of contentions raised on behalf of the assessee to challenge the constitutional validity of ss. 234A to 234C of the Act. The learned Single Judge held :

"The question whether the provision making interest payable on the happening of any event is a provision which is compensatory in character will have to be answered in the context of the language and the purpose behind the provision and not by reference to other provisions of similar or analogous nature. Viewed thus, it is not possible to hold that the provisions of ss. 234A, 234B and 234C are provisions of a penal nature simply because, in actual application of these provisions there may be situations where an assessee may render himself liable to payment of interest under each one of these provisions simultaneously for the same period nor can the compensatory nature of the provisions be deemed to have been lost simply because in a given situation the provisions may, on account of their simultaneous application to the assessee raise the liability to pay interest for the overlapping period to a rate higher than 2% per month. So long as the basic character of the levy remains compensatory the rate of interest which is levied either by the provision itself or on account of its dual effect in a given situation will be wholly immaterial. I have, therefore, no hesitation in repelling the argument advanced by learned counsel for the petitioners that the levy envisaged by ss. 234A, 234B and 234C is penal in character by reason only of the said provisions in certain situations applying for periods which are overlapping."

Learned Single Judge also repelled the argument that the impugned provisions are arbitrary because they do not provide for opportunity of hearing and held :

"The argument on its face value appears attractive and enticing. A closer examination, however, betrays its merit, precisely for two reasons. In the first place, the very purpose behind the introduction of ss. 234A, 234B and 234C is to take away from the authorities concerned the discretion of reducing or waiving the levy of interest which was earlier exercisable by them. In other words, the impugned provisions do not envisage the grant of any hearing or the grant of any relief to the assessee concerned in so far as the levy of interest is concerned. The levy is automatic the moment it is proved that the assessee has committed a default within the comprehension of any one of the provisions in question. That being so it is difficult to accept the argument that the authorities must grant such a hearing and exercise the power to grant relief, the legislative intent to the contrary notwithstanding. The principles of natural justice upon which the petitioners rely do not supplant the law, they simply supplement it. These principles have no application where a statute either by express words or by necessary implication excludes the grant of a hearing to the assessee concerned."

The provisions of ss. 234A, 234B and 234C are in my opinion incapable of being interpreted to mean that the assessee concerned has a right of being heard against the levy which is otherwise automatic in nature."

7. We shall now deal with the argument of the learned counsel for the petitioners that even in cases of extreme hardship no discretion has been conferred upon the assessing authority to waive or reduce interest and, therefore, the provisions impugned are unreasonable. It is well settled that the legislature is presumed to be aware of the need of the time and measures to be adopted for collection of revenue and Courts cannot interfere with the legislative instrument merely because there does not exist a provision in the statute giving some discretion to the authorities constituted under the Act. It is also well settled that mere hardship to a particular party cannot be a ground for holding that the statute is unreasonable. Under the taxing statutes, greater degree of latitude vests with the legislature. The choice of the legislature in matters pertaining to taxes as well as the mode and manner of recovery of taxes cannot ordinarily be interfered with by the Court. In *R.K. Garg and Others Vs. Union of India (UOI) and Others*, a Constitution Bench of the Supreme Court examined the degree of discretion vesting in the legislature in taxing statutes and held :

"Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait jacket formula and this is particularly true in the case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The Court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Morey vs. Loud* (1957) 354 US 457 where Frankfurter J., said in his inimitable style :

In the utilities, tax and economic regularisation cases, there are good reasons for judicial self restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The Courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events, self limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.

The Court must always remember that legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by

abstract symmetry that exact wisdom and nice adoption of remedy are not always possible and that judgment is largely a prophecy based on meagre and uninterpreted experience. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and, therefore, it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The Courts cannot, as pointed out by the United States Supreme Court in *Secretary of Agriculture vs. Central Reig Refining Co.* (1950) 94 L. Ed. 381, be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation, which may be made by those subject to its provisions, and to provide against such distortions and abuses. Indeed, howsoever, great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must, therefore, adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of the pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues."

The above passage provides a complete answer to the argument of the petitioners based on the possible hardship in certain situations and authoritatively sets at rest the challenge to the constitutionality of provisions on that ground.

We fully agree with the views expressed by the learned Single Judge of Karnataka High Court on the issue of validity of ss. 234A to 234C of the Act and, therefore, we do not see any reason to declare these provisions to be unconstitutional.

8. Now, we shall examine the challenge to Annexure P20 dt. 22nd Jan., 1993 by which the CBDT expressed its inability to intervene in the matter. Shri Aggarwal vehemently argued that even if the provisions of ss. 234A to 234C of the Act are construed as compensatory in nature, the Central Board should have provided relief to the petitioners by waiver of interest by exercising power under s. 119 of the Act. Learned counsel argued that the power vesting in the Board under s. 119(2) is meant to remedy the grievance of a genuine assessee and, therefore, it was incumbent upon the Board to consider the request of the petitioners in a correct perspective and grant relief by way of waiver of interest. On the other hand, Shri Sawhney argued that power vesting in the Board under s. 119 cannot be exercised in individual cases and, therefore, the decision of the Board

contained in Annexure P20 cannot be termed as arbitrary or unreasonable.

9. Sec. 119(1) empowers the Board to issue such orders, instructions and directions to several IT authorities, as it may deem fit for proper administration of the Act, and such orders, instructions and directions are binding on various authorities. Proviso to s. 119 contains a restriction on the exercise of the power by the Board under s. 119(1). The Board cannot issue any direction under the aforesaid provision so as to interfere with the proceedings of assessment in a particular case or disposal of a case in a particular manner nor can it issue direction which interferes with the jurisdiction of the appellate authority. Sec. 119(2) confers power upon the Board to grant relaxation of any of the provisions mentioned in the said sub-section including ss. 234A to 234C of the Act. For the purposes of a better appreciation, it will be useful to reproduce s. 119(2) which is as under :

"119(2). - Without prejudice to the generality of the foregoing power :

(a) the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time whether by way of relaxation of any of the provisions of ss. 139, 143, 144, 147, 148, 154, 155, sub-s. (1A) of s. 201, ss. 210, 211, 234A, 234B, 234C and 273 or otherwise, general or special orders in respect of any class of incomes or class of cases, setting forth directions or instructions not being prejudicial to assessees as to the guidelines, principles or procedures to be followed by other IT authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information;

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any IT authority, not being a Dy. CIT(A) or CIT(A) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law.

(c) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order for reasons to be specified therein, relax any requirement contained in any of the provisions of Chapter IV or Chapter VIA, where the assessee has failed to comply with any requirement specified in such provision for claiming deduction thereunder, subject to the following conditions, namely :

(i) the default in complying with such requirement was due to circumstances beyond the control of the assessee; and

(ii) the assessee has complied with such requirement before the completion of assessment in relation to the previous year in which such deduction is claimed :

Provided that the Central Government shall cause every order issued under this clause to be laid before each House of Parliament."

On a plain reading of the above quoted provisions, it becomes clear that the Board has been conferred with the power to relax various provisions. Exercise of this power is for the benefit of assessees. This inference can also be drawn from the fact that power under s. 119(2) of the Act can be exercised even in cases covered by ss. 234A to 234C of the Act. The Board can grant relaxation by a general or by a special order issued on the subject in respect of any class of income or class of cases. It is, therefore, clear that the legislature has provided mechanism for dealing with cases of hardship and the Board has been vested with the power to issue directions to mitigate the hardship in deserving cases. The intention of the legislature to confer power upon the Board of relaxation even in cases covered by ss. 234A to 234C of the Act shows that even though these provisions are compensatory in nature, the Board may in appropriate types of cases issue general or special order for grant of relaxation. It is, thus, evident that the Parliament has made specific provision to safeguard the interest of the assessees against harsh operation of various provisions including ss. 234A to 234C of the Act. Whether in a given case or a class of cases, the Board may or may not provide relief is one thing but there can be no manner of doubt that the Board has been vested with the power to issue general direction to give relief in a class of cases.

Shri Sawhney may be right in contending that the plain language employed in s. 119(2) of the Act does not in so many words refer to an individual case, but, it is not possible to hold that mere absence of the expression "in any case" before the words "in class of income or class of cases" means that the Board can under no circumstance deal with individual case. In our opinion, in a given case of an individual assessee or a group of assessees, the Board can, if it considers appropriate, exercise power of granting relief from the rigours of ss. 234A to 234C of the Act. In a given situation, a single case may constitute a class or a particular type of cases may constitute a special category. The Board may in a given case issue an order for treating an individual case as a class unto itself for the purpose of relieving an assessee of hardship. This view of ours finds support from the observations made by the Karnataka High Court in *Union Home Products Ltd. vs. Union of India* (supra) in which it has been held :

"The nature of the powers exercised by the Board under s. 119(2)(a) appears to be more of a legislative character providing for the generality of the cases or class of incomes. In the process of exercising the said power while the Board can draw upon its own experience, information or even imagination, it may also be enlightened or persuaded by the facts of a given case, however unique or freakish the same may appear to be. On receipt of any such information, or request from an assessee, the Board shall have to examine the same keeping in

view the scheme of s. 119 and the confidence which Parliament has reposed in it by delegating to it what can be said to be a certain aspect of its legislative function. The assessee's appeal to the Board for intervention under s. 119(2) will be in the nature of an appeal by a citizen of this country to the law makers exhorting them to make a provision for prevention of a hardship or inconvenience that may have been unintended or the removal of which may become necessary in a given situation. As a responsible high power statutory body exercising a certain amount of discretion in the matter of relaxation of the rigours of the provisions mentioned in s. 119(2)(a), the Board is expected to examine such requests fairly and objectively, and provide for such remedies either by way of relaxation or otherwise as may, in its wisdom, be justified in a given class of cases. When seen in this light, an individual assessee facing hardship by reason of the provisions of ss. 234A, 234B and 234C, will certainly have the opportunity of highlighting the grievance and seeking remedial steps before the Board."

Viewed in the light of the above, it is not possible to support Annexure P20 because the Board has not rejected the request made by the petitioners on merit but simply expressed its inability to intervene in the matter. Whether on an examination of the case on merits, the Board will treat the case of the petitioner and other assessee's to be a class or not is altogether a different thing, but, the Board cannot decline the request of the petitioner by merely recording its inability to intervene in the matter. Therefore, Annexure P20 and similar orders passed in other cases deserve to be quashed.

10. For the aforementioned reasons, the writ petitions are dismissed insofar as they challenge the validity of ss. 234A to 234C of the Act. The writ petitions are partly allowed insofar as they challenge the decision of the Board expressing its inability to consider and decide the representations made by the petitioners. Annexure P20 and similar other communications which are under challenge in other writ petitions are quashed with a direction that the CBDT should examine the request made by the petitioners for waiver of interest and decide the same afresh in the light of the observations made above.

It is, however, clarified that this decision shall not be construed as a direction to the Board to give relief to the petitioners.