

(1993) 12 MAD CK 0062

In the Madras High Court

Case No : Writ Petition No's. 2528 to 2539, 7430 to 7437, 11239, 11240, 18547, 18548, 18995 and 18996 of 1993

SIVANANDIIA STEELS LTD.

APPELLANT

Vs

CENTRAL BOARD OF DIRECT TAXES and Others

RESPONDENT

Date of Decision : 13-12-1993

Acts Referred:

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

Citation : (1999) 151 CTR 569

Hon'ble Judges : Raju, J

Bench : Division Bench

Advocate : K.R. Ramamani for P.P.S. Janarthana Raja and K. C. Ralappa, for the Petitioner and Jayaraman, for the Appellant;

Judgement

RAJH 4 J.

By consent of parties, the main writ petitions themselves are taken up for final disposal.

2. These batch of writ petitions have been filed by different assessee majority of them under the IT Act, praying for writs of declaration to declare the provisions contained in ss. 234A, 234B and 234C of the IT Act. Separate writ petitioners challenging the orders passed by the CBDT, Ministry of Finance or the respective ITOs who passed orders of assessment levying interest under one or the other of the provisions referred to above have also been filed.

3. Though several issues have been raised challenging the constitutional validity of the provisions themselves, the learned counsel appearing for the petitioners confined their submissions to the grievance based on the violation of the principles of natural justice and denial of an effective opportunity to the petitioners before passing the impugned orders to their detriment. Having regard to the nature of the orders passed on the directions issued in this batch of cases, I consider it inappropriate to refer to the claims based on merits. The provisions

of ss. 234A to 234C provide for the levy and collection of interest for default in furnishing the return of income, in the payment of advance tax and for deferment of advance tax. Sec. 119(1) enables the Board from time to time, to issue such orders, instructions and directions to other IT authorities as it may deem fit for the proper administration of the Act, and enjoins on such authorities and all other persons employed in the execution of the Act the duty to observe and follow such orders, instructions and directions of the Board. The proviso takes care to ensure that no such orders or instructions or directions are issued so as to require any IT authority to make a particular assessment or to dispose of a particular case in a particular manner or to interfere with the discretion of the Dy. CIT(A) or the CIT(A) in the exercise of their appellate functions. Sub-s. (2) of s. 119 of the Act enacts that 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, or for avoiding genuine hardship in any case or class of cases by general or special order in respect of any class of incomes or class of cases, to issue any directions or instructions not prejudicial to the assessee 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 in public interest or allowing an application for claim for any exemption taken or any other relief under the Act and to deal with such claims or applications on merits in accordance with law. Sub-s. (2) of s. 119 has three different sub-clauses meant to govern different situations and different circumstances depending upon the generality of cases or individual claims made before the Board or dealt with by the Board on its own.

4. In the various cases, the assessee concerned have moved the Central Board for relief invoking the provisions under s. 119 of the Act for waiver of the levy of interest under one or more of the provisions referred to above. Such claims made appear to have been rejected by simply referring to the petition filed by the respective assessee and by stating that the Board regrets its inability to intervene in the matter or grant relief as prayed for as the case may be. In some of the cases, as noticed earlier, the respective ITOs/assessing authorities have applied the statutory provisions under challenge and levied the interest under one or the other of the three provisions referred to above.

5. Mr. K.R. Ramamani, learned Senior Counsel appearing for the petitioners in some of the cases, has contended that the exercise of power under S. 119 moved by the assessee concerned involves quasi-judicial exercise of powers and that, therefore, the Board could not have summarily rejected the claim without giving an opportunity of hearing to the petitioners concerned and that the denial of such an opportunity has resulted in grave prejudice and injustice to the petitioners. The learned Senior Counsel also submitted that if only such an opportunity has been given, the petitioners could have substantiated before the Board that the case warrants the exercise of powers under s. 119 of the Act by grant of necessary waiver or exemption as prayed for by them. Reliance has

been placed by the learned counsel on the decision H.S. Anantharamaiah Vs. Central Board of Direct Taxes and others, and (1993) 204 nR (St) 150 which is a short-note and summary of the decisions relating to the order dt. 28th Oct., 1993, made by the Supreme Court in SLP (Civil) No. 17512 of 1993 which in its turn is an appeal filed by the Central Board against the judgment of the Division Bench of the Karnataka High Court (1993) 109 CTR (Kar.) 353 . (1993) 201 M 526 (Kar.) (supra). Reliance was also placed upon a decision of a Gujarat High Court in Income Tax Bar Association and Another Vs. Chief Commissioner of Income Tax and Others, to substantiate the plea that wherever the case or circumstances warrant, the Central Board can pass orders taking into consideration the genuine grievance of the assessee in an individual case granting relief under s. 119 of the Act. Mr. Rajappa, learned counsel, appearing for two of the writ petitioners adopted the submissions of the learned senior counsel.

6. Mr. J. Jayaraman, learned Senior Counsel appearing for the respondents, contended that giving of an oral hearing is not a necessary attribute or an ingredient of the principles of natural justice and that even if this Court is of the view that a reconsideration by the Board of the matter is required, the Board must be left with absolute discretion in the matter and such exercise of discretion ought not to be curtailed in any manner whatsoever. Reliance was also placed on the decision of the Supreme Court [Corborundum Universal Ltd. vs. CBDT (1989) 80 CTR (SC) 85: (1989) 180 ITR 171 1.

7. I have carefully considered the submissions of the learned Counsel appearing on either side. I am of the view that the ground urged on behalf of the petitioners in the first instance about the violation of the principles of natural justice merits acceptance. From the report of the short-notes of cases reported in (1993) 204 ITR 150 (supra) it is seen that the learned Judges of the Supreme Court dismissed the SLP against the Judgment of the Division Bench of Karnataka High Court (1993) 109 CTR (Kar.) 353 : H.S. Anantharamaiah Vs. Central Board of Direct Taxes and others, where under, the Division Bench of the Karnataka High Court has taken the view reversing the judgment of the learned single Judge of the Court and held that the power exercised by the CBDT under s. 119(2)(b) of the IT Act, 1961 was a quasi-judicial power, and an opportunity had to be given to the assessee to be heard before orders were passed under that section on any claim made by an assessee. The Division Bench of the Karnataka High Court while considering the scope of power under s. 119(2)(b) has expressed the following opinion :

"However, sub-s. (2) thereof, relaxes the conditions imposed by cls. (a) and (b) of the proviso to sub-s. (1) of s. 119 on the power of the Board; because sub-s. (2) opens with the words "Without prejudice to the generality of the foregoing power", the Board may exercise power as per the provisions contained in cls. (a), (b) and (c) of sub-s. (2). Thus, sub-s. (2) carves out certain exceptions from the limitations imposed by cls. (a) and (b) of the proviso to sub-s. (1) on the power

of the Board. In sub-s. (2), cls. (a) and (c) are not relevant for our purpose, as we are concerned only with cl. (b) which is already extracted above. Clause (b) of sub-s. 119 of the Act enables or empowers the Board to admit an application or a claim or return filed after the expiry of the period specified for avoiding genuine hardship caused in any case or class of cases. Thus, the statute makes it incumbent upon the Board to consider the case pleaded under cl. (b) of sub-s. (2) of s. 119 of the Act by an assessee who files his return beyond time. This power has to be exercised by the Board and the Board alone and not by any other authority. It is not possible to hold that this power is administrative when it relates to condonation of delay in a case where the return is filed beyond the period prescribed. The Board is required to exercise its discretion by taking into consideration all the relevant facts and circumstances and determine whether the delay in filing the return should or should not be condoned. The order must be informed by reasons. It is not an arbitrary exercise of power. This power has all the traits of judicial power. Therefore, we are of the view that the power exercisable by the Board under cl. (b) of sub-s. (2) of s. 119 of the Act is quasi-judicial in nature."

The decision of the Supreme Court relied upon for the respondents Carborundum Universal Ltd. Vs. Central Board of Direct Taxes, New Delhi, rejects the right of personal hearing or the claims for the supply of a report of a CIT said to have been submitted to the Board made by the petitioner before Court in that case. Even that apart, it is seen from the report that in the said case before the Supreme Court, the power invoked was for waiver under s. 220(2A) of the Act, that the petitioner therein had an opportunity to represent his case in writing and that the Board had taken into consideration the said representations.

8. In the light of the categorical pronouncements of the Division Bench of the Karnataka High Court (1993) 109 CTR (Kar.) 353: H.S. Anantharamaiah Vs. Central Board of Direct Taxes and others, , the ratio of which is found acceptable to me and with which I respectfully agree, I am of the view that the power exercised by the Board under sub-s. (2) of s. 119 of the Act is quasi-judicial in nature. The exercise of powers under the said provision is not only made to depend but conditioned upon the existence or otherwise of certain vital and essential facts and circumstances. The question as to under what sub-clause of sub-s. (2) of s. 119 of the Act the Board is moved by an assessee appears to me to be immaterial for the issue now under consideration, The position will depend very much upon the fact as to whether the assessee has moved for relief under any of the provisions contained in sub-s. (2) of s. 119 of the Act. Though the power under s. 119(2) of the Act is discretionary, it is by now well settled that the exercise of discretion has to be in accordance with the rules of reason and justice and not according to private opinion. The essential safeguards in the exercise of discretionary powers have been held to be that such exercise should be according to law and not arbitrary or fanciful. If the same claim of an assessee is denied or rejected, the refusal of a claim would seriously affect the rights of the assessee concerned involving civil consequences. Consequently,

there is no escape from the proposition laid down by the Division Bench of the Karnataka High Court in the decision referred to above that the power under s. 119(2) of the Act is one of quasi-judicial nature and that any rejection of the claim should precede an effective opportunity to the assessee/petitioner concerned and that the decision arrived at though need not be of the nature of partake the character of a judicial decision must sufficiently disclose the mind of the authority that decision has been arrived at on approver and due application of mind to the relevant circumstances and criteria indicated in the statute.

9. The impugned orders when decided in the light of the above principles, in my view, cannot be allowed to stand in so far as the orders passed by the CB13T are concerned. The orders of the CBDT and that of the Ministry concerned communicated shall stand hereby quashed. The Board is directed to restore the petitioners already filed to its file and consider the claim and dispose of the same after giving an effective opportunity to the petitioners and pass orders on the claim made for waiver in accordance with law. W.P. Nos. 2528, 7430, 7432, 7436, 11239, 18547, and 18996 of 1993 shall stand hereby ordered and allowed to the extent and on the terms and directions referred to above.

10. So far as writ petitions filed against the order of the assessing authorities applying the provisions of the Act and levying interest are concerned, it is stated by the learned counsel for the petitioners that in one of such cases, on appeal, relief has been obtained by the assessee, though the Department has persued the matter in that case on further appeal. Be that as it may, either in such case or in the other cases filed directly against the ITO, the petitioners concerned shall have liberty to move the concerned ITO/assessing authority or and CBDT for appropriate reference and orders, depending upon the grievance and relief that is sought for. As and when the petitioners in those writ petitions move the Central Board, the said authority shall consider the claims so made in the light of the directions issued in the other batch of cases referred to above. The assessing authority concerned also shall be at liberty as and when moved by the respective petitioners to consider the claim, if any, that may be made as are permissible in law for such authority to consider and pass appropriate orders in this regard.

11. So far as W.P. Nos. 2529, 7431, 7433, 7735, 7737, 11240, 18548 & 18995 of 1993 challenging the constitutional validity of ss. 234A to 234C of the Act are concerned, the learned counsel, in the light of the orders passed as above, has made an endorsement on the case bundle that the petitioners are not pursuing the challenge, for the time being in these proceedings and that liberty may be given to withdraw such writ petitions. Accepting the request made, the writ petitioners filed for writs of declaration challenging the constitutional validity of the provisions of the Act referred to above shall stand hereby dismissed as withdrawn and not pressed. This Court makes it very clear that the dismissal of such writ petitions shall not be construed as an expression of any opinion on the validity of the provisions themselves.

12. So far as writ petition Nos. 18995 and 18996 of 1993 are concerned, the

petitioners are challenging the provisions of the Act and seeking for relief contending that those provisions cannot be applied to them in respect of the respective assessment years under consideration. In these two cases also, there is no controversy about the fact that they have approached the CBDT and that their claim came to be rejected as in the other batch of cases in which the order of CBDT has been quashed (supra). The learned counsel for the petitioner Mr. Rajappa represents that if the orders of the CBDT are quashed, even in these cases, as in the other batch of cases and a direction for reconsideration is issued, he is not pressing for the adjudication of the issue relating to the challenge made to the statutory provisions under ss. 234A to 234C. In the light of the above, in modification of the reliefs sought for in these two writ petitions, a writ of certiorari shall issue to quash the orders of the first respondent in F. No. 400/76/1992-IT(B) dt. 19th Jan., 1993, which order shall stand hereby quashed and as in the other batch of cases, the petitioner already filed for claiming waiver shall be restored for consideration and shall be disposed of after giving an effective opportunity to the petitioners in the same manner as directed in the other cases.

13. In W.P. No. 18996 of 1993 though the relief sought for is for a writ of certiorari to quash the order of assessment dt. 30th Dec. 1991, in the light of the fact that this petitioner also has moved the CBDT and an order dt. 19th Jan., 1993, in F. No. 400/76/1992-IT(B) has been passed rejecting the claim, the relief of certiorari as prayed for is modified and that the order of the first respondent dt. 19th Jan., 1993, shall stand quashed with consequential directions as in the other cases to the first respondent to consider the matter afresh after giving an effective opportunity as in those other cases. The above writ petition shall stand finally disposed of on the above terms and subject to the directions given in this order.

14. So far as the writ petitions arising under the WT Act, 1957, are concerned, there is no controversy among the counsel appearing on either side that the ratio of the decision in respect of the cases arising under the IT Act, 1961 would squarely govern these cases also. Writ Petition Nos. 2531, 2533, 2535, 2537 and 2538 of 1993, arising under the WT Act challenge the provisions contained in s. 17B of the Act which is on par with the provisions contained in the IT Act dealt with in the other batch of cases. In the other cases, the learned counsel made it clear that they are not pressing the writ petitions filed for writs of declaration challenging the constitutional validity of s. 17B of the Act. Consequently, W.P. Nos. 2531, 2533, 2537 and 2538 of 1993 shall stand dismissed as withdrawn and not pressed. The dismissal of these writ petitions shall not be considered as an expression of any opinion on the validity of the provision itself.

15. Insofar as W.P. Nos. 2530, 2532, 2534, 2536 and 2539 of 1993 filed by the petitioners under the WT Act, 1957, challenging the orders of the assessing authority applying the provisions of s. 17B of the Act levying interest are concerned, the petitioners shall have liberty to move the concerned assessing

authority or the CBDT under s. 10(2) of the Act which is almost akin to the powers of the Board under s. 119(2) of the IT Act, 1961. In the light of my conclusions arrived at on the nature and scope of powers under s. 119(2) of the IT Act, the ratio of which, in my view, also applies to the claims and applications that may be made under s. 10(2) of the WT Act, 1957, the concerned authorities shall consider the claims, if any, made by the petitioners and pass appropriate orders on merits and in accordance with law after giving an effective opportunity, as laid down and directed in the batch of cases dealt with above arising under the IT Act.

No costs.