(2023) 11 SEBI CK 0028

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 1369, 1370, 1371 Of 2023, Appeal No. 886, 887 Of 2023

Sujit Karkera APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 30-11-2023

Acts Referred:

Income Tax Act, 1961 — Section 220(2A)
Securities And Exchange Board Of India Act, 1992 — Section 28A

Citation : (2023) 11 SEBI CK 0028

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Meera Swarup, Technical Member

Bench : Division Bench

Advocate : Kunal Katariya, Aneri Shah, Sumit Rai, Ravishekhar Pandey, Nishit Dhruva, Shefali Shankar, Rasika Ghate, Harsh Sheth, Deepak Dhane

Final Decision : Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. We have heard the learned counsel for the parties. On May 15, 2012 the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) passed an order imposing certain penalty upon the appellants. Admittedly, the amount was not paid at that stage. The appellants filed an appeal before this Tribunal which was allowed by an order dated December 17, 2012 and the order of the AO was set aside. SEBI went up in appeal before the Supreme Court where the appeal was entertained but no interim order was passed and in fact, the stay application was rejected by the Supreme Court by an order of April 22, 2013. Thereafter the Supreme Court allowed the appeal of SEBI by an order of September 20, 2017 and the order of the Tribunal was set aside.

2. The effect of the order of the Supreme Court was that the order of the AO stood revived and, consequently, the appellant was directed to pay the amount

as per the AO's order.

3. The amount of penalty as per the AO's order was not paid and, consequently, a demand notice dated August 30, 2019 was issued directing the appellants to pay the penalty as per the AO's order along with interest accrued on it from 2012 onwards. Even this order was not complied with by the appellants and accordingly attachment orders were issued pursuant to which the principal amount was paid by the appellants on various dates.

4. It transpired that after the payment of the penalty amount an application dated April 11, 2023 was filed by the appellants for waiver of interest under Section 220(2A) of the Income Tax Act, 1961 which is applicable in recovery proceedings initiated under Section 28A of the SEBI Act. This application was rejected by impugned order dated May 09, 2023 without assigning any reason. The appellants being aggrieved by the said order have filed the present appeals.

5. At the outset, the learned counsel for the respondent raised a preliminary objection, contending that the appeal is barred by laches as more than three years have elapsed from the date of the issuance of the notice of demand which was issued in 2019. Further, the Recovery Certificate has more or less being complied with and since the principal amount has been paid and the Recovery Certificate has been partly satisfied and therefore the appeal is not maintainable.

6. Having heard the learned counsel for the parties, we are of the view that the objection raised by the respondent does not hold any merit.

7. We find that no reason has been given in the impugned order with regard to waiver of the interest as prayed by the appellants. Before us two issues are raised, namely, that in view of the hardships the appellants is entitled for reduction or waiver of the amount of interest under Section 220(2A) of the Income Tax Act for the reasons given in the application. Further interest for the period 2012-2017 could not be charged as during this period no interest could be levied as there was no order of penalty in existence. In support of his submission, the learned counsel placed reliance upon a decision of the Supreme Court in Vikrant Tyres Ltd. vs First Income Tax Officer, Mysore (2001) 3 SCC 76 which was considered and followed by the Jharkhand High Court in New United Construction Co. vs. Commissioner of Income Tax and Others 2004 SCC OnLine Jhar 735.

8. Having heard the learned counsel for the parties and in view of the decisions cited aforesaid, we are of the view that the Recovery Officer is required to take into consideration as to whether interest could be validly levied for the period 2012-2020 when the order of the AO was not in existence and further whether the appellant is entitled for waiver or reduction of interest.

9. Considering the aforesaid, we are of the view that the matter requires reconsideration by the Recovery Officer on the aforesaid two issues. Thus, on this short ground, the impugned order cannot be sustained and is quashed. The

matter is remitted to the Recovery Officer to pass a reasoned and speaking order after giving an opportunity of hearing. In the circumstances of the case, parties shall bear their own costs.

The misc. applications are disposed of accordingly.