

(1992) 03 SC CK 0083

In the Supreme Court Of India

Case No : Criminal Appeal No's. 207-208 of 1992

Y.P. Chawla and others

APPELLANT

Vs

M.P. Tiwari and another

RESPONDENT

Date of Decision : 31-03-1992

Acts Referred:

Finance Act, 1991 — Section 119
Income Tax Act, 1961 — Section 119, 276

Citation : AIR 1992 SC 1360 : (1992) 2 CompLJ 36 : (1992) 103 CTR 400 : (1992) 195 ITR 607 : (1992) 2 JT 429 : (1992) 1 SCALE 760 : (1992) 2 SCC 672 : (1992) 2 SCR 440 : (1992) 63 TAXMAN 538

Hon'ble Judges : R. M. Sahai, J;Kuldip Singh, J

Bench : Division Bench

Advocate : Altaf Ahmed, Additional Solicitor, B.B. Ahuja and A. Subhashini, for the Appellant; P.C. Khanna, Ruchhi Khanna and Indu Goswamy, for the Respondent

Final Decision : Allowed

Judgement

Kuldip singh, J.—Special leave granted.

2. Whether the Central Board of Direct Taxes, (the Board) u/s 119 of the income tax Act, 1962 (the Act) can issue instructions to control the discretion of the Commissioner of income tax u/s 279(2) of the Act, to compound the offences is the short question for our consideration.

3. M.P. Tiwari and M.L. Passi are the respondents before us in these appeals. M.P. Tiwari is the Secretary and principal officer of M/s. Hans Raj Gupta and Co. Pvt. Ltd. He along with other Directors of the said Company was prosecuted u/s 276B of the Act on the charge that he committed defaults in depositing the income tax deducted from the salaries of the employees of the Company during the assessment years 1979-80 to 1982-83, M.L. Passi was the Managing Director of M/s. Inspi Auto Industry Pvt. Ltd. He was also prosecuted u/s 276B of the Act for committing defaults in depositing the tax deducted at the source by the company.

4. Both Tiwari and Passi, applied to the Commissioner, income tax, invoking his power u/s 279(2) of the Act and seeking composition of the offences against them. Section 279(2) of the Act as it was at the relevant time is as under:

The Commissioner may either before or after the institution of proceedings compound any such offences.

5. Section 119(1) which empowers the Board to issue orders, instructions and directions for the proper administration of the Act is reproduced hereunder:

119 (1) The Board may, from time to time, issue such orders, instructions and directions to other income tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:

Provided that no such orders, instructions of directions shall be issued-

(a) so as to require any income tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Deputy Commissioner (Appeals) or the Commissioner (Appeals) in the exercise of his appellate functions.

6. The Board issued instruction No. 1317 dated March 11, 1980 u/s 119(1) of the Act providing guidelines for the exercise of power u/s 279(2) of the Act. The relevant part of the instructions is as under:

B. CASES WHICH SHOULD NOT BE COMPOUNDED:

1. No compounding will be done if the assessee belongs to a monopoly or large industrial house or is a director of a company belonging to or controlled by such house.

2. Cases in which the prospects of a successful prosecution are good should not ordinarily be compounded.

3. Compounding will not be done in case of second and sub-sequent offences.

C. CASES WHICH MAY BE COMPOUNDED:

1. Except in cases falling within category (1) and (3) of B above, compounding of an offence can be done with the consent of the Board, if the amount involved in the offence/default is less than Rupees one lakh.

2. Except in cases falling under categories (1) and (3) of B above, and category (1) of C, compounding may be done with the approval of the Minister, if, in view of developments taking place subsequent to the launching of the prosecution it is found, after consultation with the Minister of law, that the chances of conviction are not good.

D. Notwithstanding anything stated in B, the Board may approve compounding in

deserving and suitable cases involving hardship with the approval of the Minister.

6. While the above are only intended to provide broad guidelines to be followed before sending a proposal for compounding the previous approval of the Board should always be obtained before deciding the compounding of an offence. No assurance of any kind should be given to the assessee before obtaining the Board's approval.

7. Tiwari and Passi, by way of two separate writ petitions, challenged the above quoted instructions before the Delhi High Court. The High Court allowed the writ petitions and quashed the instructions on the following reasoning:

We have already produced some of the clauses of the instructions which on the face of it run counter to the provisions of the Act. This circular in our opinion has substantially curtailed the powers of the Commissioner of Income Tax, which are vested in him u/s 279 of the Act. In fact the decision of the Commissioner has ceased to be his decision and has become the decision of the board and/or that of the Minister, in view of the instructions that, "the previous approval of the Board should always be obtained before deciding to compound an offence." "...No assurance of any kind should be given to the assessee before obtaining Board's approval.

This was not the intention of the legislature when Section 279 of the Act was incorporated.

8. These appeals by way of special leave are by the Revenue against the judgments of the High Court.

9. this Court in *Navnitlal C. Javeri Vs. K.K. Sen*, *Appellate Assistant Commissioner of Income Tax, 'D' Range, Bombay*, ; *Ellerman Lines Ltd. Vs. Commissioner of Income Tax, West Bengal, Calcutta*, and in *K.P. Varghese Vs. Income Tax Officer, Ernakulam* and Another, has held that circulars issued by the Central Board of Direct Taxes u/s 119(1) of the Act are binding on all officers and persons employed in the execution of the Act even if they deviate from the provisions of the Act. The High Court has discussed these judgments in detail and has distinguished them on plausible grounds. It is not necessary for us to go into this question because the legal position has altered to the advantage of the Revenue by the introduction of an Explanation to Section 279 of the Act by the Finance Act (2) of 1991 which has been made operative with effect from April 1, 1962. The Explanation is as under:

Explanation : For the removal of doubts, it is hereby declared that the power of the Board to issue orders, instructions or directions under this Act shall include and shall be deemed always to have included the power to issue instructions or directions (including instructions or directions to obtain the previous approval of the Board) to other income tax authorities for the proper composition of offences under this section.

10. The Explanation is in the nature of a proviso to Section 279(2) of the Act

with the result, that the exercise of power by the Commissioner under the said section has to be subject to the instructions issued by the Board from time to time. The Explanation empowers the Board to issue orders, instructions or directions for the proper composition of the offences u/s 279(2) of the Act and further specifically provides that directions for obtaining previous approval of the Board can also be issued. Reading Section 279(2) along with the Explanation, there is no manner of doubt that the Commissioner has to exercise the discretion u/s 279(2) of the Act in conformity with the instructions issued by the Board from time to time.

11. We allow the appeals, set aside the High Court judgments dated November 30, 1990 in both the cases and dismiss the writ petitions filed by Tiwari and Passi. No costs.