

(2003) 06 AHC CK 0019

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 754 of 2003 3 June 2003

Shivangi Steels (P) Ltd.

APPELLANT

Vs

Asstt. Commissioner of Income
Tax

RESPONDENT

Date of Decision: June 3, 2003

Acts Referred:

- Income Tax Act, 1961 - Section 220

Citation: (2003) 133 TAXMAN 403

Hon'ble Judges: R.K. Agarwal, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

R.K. Agarwal, J.

The contention of the petitioner is that he has filed an Appeal against the block assessment order, which is pending before the Commissioner (Appeals) Agra respondent No. 2. Application filed u/s 220(6) of the Income Tax Act has been rejected by the Assistant Commissioner, Central Circle, Agra. Respondent No. 1 after a period of more than 1 year, on the ground that more than a year has passed and he had not deposited the amount and therefore the demand cannot be stayed.

2. With the consent of learned counsel for the parties, the writ petition is disposed of at the admission stage itself without inviting counter-affidavit in accordance with the rules of court.

3. I have heard Shri Tarun Agarwala counsel for the petitioner and Shri Dhananjay Awasthi learned standing counsel for the respondents. Section 220(6) of the Income Tax Act gives a discretion to the assessing authority to treat an assessee as not being in default in respect of the amount in dispute in the Appeal even though the time for payment has expired long back but the appeal has remained undisposed of.

The discretion conferred u/s 220(6) of the Income Tax Act has to be exercised in accordance with law. The Hon"ble. Supreme Court in the case of [L. Hirday Narain Vs. Income Tax Officer, Bareilly,](#) had held that the discretion which has been conferred on the Income Tax Authorities has to be exercised judiciously. In the present case a perusal of the impugned order shows that discretion which has been exercised by the Respondent No. 1 in rejecting the application, does not give any reason nor it has been exercised judiciously. In this view of the matter, the impugned order cannot be sustained and is hereby set aside.

4. Shri Dhananjay Awasthi submitted that the court may direct that the appellate authority to decide the appeal expeditiously. Accordingly, the Commissioner (Appeals) is directed to decide the appeal filed by the petitioner expeditiously preferably within 1 month from the date the certified copy of the order is filed before him. The petitioner"s counsel undertakes not to take any adjournment in the matter. The petitioner shall not be treated as assessee in default. The order of attachment dated 23-5-2003 shall be kept in abeyance.

5. The writ petition succeeds and is allowed.