
(2013) 1 PLJR 735

Patna High Court

Case No: CWJC No. 4152 of 1995

Janki Sao (HUF)

APPELLANT

Vs

Union of India and
Others

RESPONDENT

Date of Decision: Aug. 31, 2010

Acts Referred:

- Income Tax Act, 1961 - Section 119, 119(2)(a), 139, 139(8), 139(8)(a)

Citation: (2013) 1 PLJR 735

Hon'ble Judges: S.K. Katriar, J; Birendra Pd. Verma, J

Bench: Division Bench

Advocate: A.K. Rastogi, for the Appellant; Harshwardhan Prasad and Rishi Raj Sinha for the Respondent No. 3, for the Respondent

Final Decision: Dismissed

Judgement

S.K. Katriar, J.

This writ petition is directed against the order dated 30.3.1994 (Annexure-2), passed by the Settlement Commission (IT & WT), Additional Bench, Calcutta, whereby the returns submitted by the petitioner under the provisions of Section 245C of the Income Tax Act, 1961 (hereinafter referred to as the "Act"), has been disposed of. The petitioner raises a grievance with respect to the interest imposed on him. We have perused the materials on record and considered the submissions of the learned counsel of the parties. The present proceedings relate to the assessment years 1987-88, 1988-89, 1989-90, 1990-91 and 1991-92. The petitioner is an agriculturist, cultivated potatoes, and was also Director of M/s Janki Cold Storage (P) Ltd., situate in the district of Nalanda. The petitioner had submitted his returns under the Act. The Commission disposed of the same on merits by the impugned order. The petitioner does not raise grievance with respect to the order of assessment except the following portion of the order whereby interest has been imposed on him:--

Interest shall be charged u/s 139(8) of the I.T. Act, 1961 in full for assessment years 1987-88 and 1988-89 as per law. Interest will also be charged in full under Sections 234A, 234B and 234C of the I.T. Act, 1961 for assessment years 1989-90, 1990-91 and 1991-92 as per law. Additional interest if any, chargeable u/s 215 /217 of the I.T. Act, 1961 is waived in full for assessment years 1987-88 and 1988-89 only.

2. Learned counsel for the petitioner submits that the question whether or not the petitioner is in the facts and circumstances of the case liable for payment of interest has not been considered by the Commission. It is, therefore, submitted that the relevant circular providing such remission may be considered and appropriate relief by way of non-payment of, or reduction in, interest may be granted to the petitioner. He relies on the judgment of the Constitution Bench of the Supreme Court in the case of [Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others](#), . He has also placed before us the relevant circulars issued by the Central Board of Direct Taxes which, in his submission, have been ignored.

2.1. He further submits that the Supreme Court has held that order of every quasi-judicial authority must be supported by reasons. He relies on the judgment of the Supreme Court in the case of the [The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India \(UOI\) and Another](#), . He lastly submits that discretion has to be exercised reasonably and should advance the aims and objects of the legislation. He relies on the judgment of the Supreme Court in [Clariant International Ltd. and Another Vs. Securities and Exchange Board of India](#), .

3. Learned Junior Standing Counsel for the Department of income tax has opposed the prayer made on behalf of the petitioner. He submits that the impugned order was passed on 30.3.1994, and the circulars of the Board were promulgated at a later date and, therefore, inapplicable to the present case. He relies on the judgment of the Supreme Court in Commissioner of Income Tax vs. Anjum M.H. Ghaswala and Others (supra).

4. We have perused the materials on record and considered the submissions of the learned counsel for the parties. The impugned order has been passed by the Commission on the petitioner's application u/s 245C of the Act. The question whether or not the Commission has discretion to impose interest, or for that matter to waive or reduce interest, on the tax assessed by the Commission fell for the consideration of the Supreme Court in Commissioner of Income Tax vs. Anjum M.H. Ghaswala (supra). The relevant portion of the judgment of the Constitution Bench is reproduced hereinbelow:--

The learned Solicitor General has pointed out that by virtue of the power vested in the Board u/s 119(2)(a) of the Act, the Board has issued circulars by Notification No. F. No. 400/234/95-IT(B), dated May 23, 1996. As per this circular, it has empowered that the Chief Commissioner of income tax and Director-General of income tax may waive or reduce interest charged under Sections 234A, 234B and 234C of the Act in the class of cases or class of incomes specified in paragraph 2 of the said order for the period and on

conditions which are enumerated therein. He submitted that in view of the said circular, the same authority can be exercised by the Commission since the said circular would amount to relaxation of the rigour of Sections 234A, 234B and 234C of the Act. We are in unison with this submission of the learned Solicitor General. This court in a catena of cases has held that the circulars of the Central Board of Direct Taxes are legally binding on the Revenue: See [UCO Bank, Calcutta Vs. Commissioner of Income Tax, West Bengal](#), . Since these circulars are beneficial to assesseees, such benefit can be conferred also on assesseees who have approached the Settlement Commission u/s 245C of the Act on such terms and conditions as contained in the circular. In our opinion, it is for this purpose that Section 245F of the Act has empowered the Settlement Commission to exercise the power of an income tax authority under the Act. We must clarify here that while exercising the power derived under the circulars of the Board, the Commission does not act as a subordinate to the Board but will be enforcing the relaxed provisions of the circulars for the benefit of the assessee in the process of settlement.

For the reasons stated above, we hold that the Commission in exercise of its power u/s 245D(4) and (6) does not have the power to reduce or waive interest statutorily payable under Sections 234A, 234B and 234C except to the extent of granting relief under the circulars issued by the Board u/s 119 of the Act.

5. It is thus evident on a perusal of the judgment of the Supreme Court that the circulars issued by the Board under the provisions of Section 119(2)(a) of the Act has statutory flavour and binds everybody. It has further been held that the Commission has under normal circumstances, no power or authority to waive interest fixed by the statute, except to the extent provided by circular(s) of the Board. Section 139 of the Act provides the procedure for assessment and is equally applicable to the proceedings before the Commission. Sub-section (8)(a) of Section 139 is reproduced hereinbelow for the facility of quick reference:--

(8)(a) [Where the return under sub-section (1) or sub-section (2) or sub-section (4) for an assessment year is furnished after the specified date, or is not furnished, then [whether or not the [Assessing] Officer has extended the date for furnishing the return under sub-section (1) or sub-section (2)], the assessee shall be liable to pay simple interest at [fifteen] per cent per annum, reckoned from the day immediately following the specified date to the date of the furnishing of the return or, where no return has been furnished, the date of completion of the assessment u/s 144, on the amount of the tax payable on the total income as determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source:

Provided that the [Assessing] Officer may, in such cases and under such circumstances as may be prescribed, reduce or waive the interest payable by any assessee under this sub-section.

6. It is thus evident that Section 139(8)(a) provides that the assessee shall be liable to pay simple interest @ 15% per annum with other conditions as to its applicability detailed therein. The proviso provides that the assessing officer may reduce or waive the interest payable by any assessee under these sub-sections in the circumstances as may be prescribed. This has to be read with the circular, if any, issued by the Board in terms of Section 119(2)(a) of the Act. In other words, if such a circular were not in force on the relevant date, then the Commission is bound in law to charge interest as per the terms of Section 139(8)(a) of the Act, and it has no option at all. However, if the Board has promulgated a circular in terms of Section 119(2) (a) of the Act providing for reduction of interest, then and then can alone the Commission can exercise its powers in this behalf.

7. The Supreme Court has noticed the circular of the Board dated 23.5.1996, providing for waiver or reduction of the interest. Learned counsel for the petitioner instead relies on the circular notification No. F-212/495/92-IT (A-II), dated 2.5.1994. Neither of the two circulars brought to our notice were in force on the day the Commission finally disposed of the matter. In other words, the Commission on that date was bound by the provisions of Section 139(8)(a) of the Act, read with the provisions of Sections 234A, 234B and 234C of the Act applicable to the different assessment years in question, and had to pass orders for payment of interest. In the result, we do not find any merit in this writ petition and is dismissed. There shall be no order as to costs.

B.P. Verma, J.

I agree.