

Carborundum Universal Ltd.

Vs

Central Board of Direct Taxes, New Delhi

Special Leave Petitions (Civil) Nos. 6384 and 6399 of 1987

(G. L. Oza, Ranganath Misra JJ)

05.10.1989

### JUDGMENT

These two applications under article 136 of the Constitution are directed against two separate orders made by the Central Board of Direct Taxes and communicated on March 2, 1987, declining to waive the demand of interest made by the Income-tax Officer, Central Circle XVI, Madras, under section 220(2) of the Income-tax Act, 1961 (hereinafter "the Act"), in exercise of the powers under section 220(2A) of the Act. The claim related to the assessment years 1979-80 and 1982-83.

The assessee-petitioner applied for waiver on November 5, 1986, when the Income-tax Officer, by his separate orders dated September 9, 1985, claimed in respect of the assessment year 1979-80 interest of Rs. 2,06,547 and for the other year a sum of Rs. 1,63,000. The Income-tax Officer raised the demand for interest as provided under the law taking into account the finally sustained demands for the two years and interest was calculated from the date when the payment covered by the assessments was due and the date when the demand of interest was made.

Notice was issued in the special leave petitions confined to the question as to whether the petitioner was entitled to a hearing before the Board declined to exercise its power.

Section 220 of the Act deals with collection and recovery of income-tax. The Income-tax Officer's orders were in exercise of powers under section 220(2) read with rules 118 and 119A of the Rules and the rules made thereunder. The assessee-petitioner had invoked the power under sub-section (2A) of section 220, a provision which was inserted in the Act with effect from October 1, 1984. It provides :

"Notwithstanding anything contained in sub-section (2), the Board may reduce or waive the amount of interest payable by an assessee under the said sub-section if, on the recommendation made by the Commissioner in this behalf, it is satisfied that -

- (i) payment of such amount would cause genuine hardship to the assessee;
- (ii) default in the payment of the amount on which interest was payable under the said sub-section was due to circumstances beyond the control of the assessee; and
- (iii) the assessee has co-operated in any enquiry relating to the assessment or any proceedings for the recovery of any amount due from him."

It is not disputed that the power under sub-section (2A) is discretionary. The petitioner has not

produced a copy of its petition before the Board. There is, however, an averment in the special leave petitions that a request had been made to the Board to afford a personal hearing before the petitions under sub-section (2A) were disposed of. Sub-section (2A) indicates that the decision of the Board in regard to the three aspects mentioned therein is to be made on the basis of the report of the Commissioner. The order shows that the report of the Commissioner has been taken into consideration. It is not even the petitioner's assertion that the Commissioner's recommendations have not been accepted by the Board.

There is no procedural statutory requirement of a hearing for the disposal of an application under section 220(2A) of the Act. The legal position is that where a statutory provision does not exclude natural justice, the requirement of affording an opportunity of being heard can be assumed, particularly when the proceedings are quasi-judicial. Exclusion, however, can either be by a clear provision or inferred from the scheme, as also the nature of power which is being exercised. We have already noticed that the power of the Board which was invoked was discretionary. It was to be exercised on the basis of the recommendation of the Commissioner and the material provided by the assessee. Personal hearing in every situation is not necessary and there can be compliance with the requirements of natural justice of hearing when a right to represent is given and the decision is made on a consideration thereof. Keeping the nature of the power invoked for exercise, the fact that the petitioner had an opportunity to represent its case in writing and the further fact that the Board had taken into consideration the report of the Commissioner in the background that it is not the allegation of the petitioner that the Commissioner's recommendations were different, we do not think, that in the facts of the case, it can be held that the petitioner was entitled to a right of being personally heard before its petition under section 220(2A) of the Act was disposed of as aforesaid. The petitioner has claimed that he was entitled to a copy of the Commissioner's report and an opportunity to canvass that the contents thereof, to the extent they went against it, were incorrect. We do not think there is scope to contend that the assessee is entitled to such a procedural safeguard. Our conclusion is, however, confined to the facts of the case and as and when the question arises in a different situation, the matter may be open to examination.

An objection has been taken by the Revenue to the maintainability of the petitions under article 136 of the Constitution as the petitioner, instead of going before the High Court, has come directly to the Supreme Court. Reliance was placed by Dr. Gauri Shanker for the Department on the observations of this court in *P. N. Kumar v. Municipal Corporation of Delhi* [1988] 172 ITR 624 (SC); [1987] JT 4 SC 232. We do not propose to examine that aspect in this case taking into consideration the fact that notice has already been issued on the special leave petitions and the matters have been pending for more than two years in this court. We are satisfied that the petitioner would be prejudiced if, at this stage, it was required to move the High Court.

Both the special petitions are, for the reasons indicated above, dismissed. There would be no order as to costs.

Petition dismissed.

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