

SUPREME COURT OF INDIA

Satyam Computer Services Ltd.

Vs.

Central Board of Direct Taxes

SLP (C) No. 9590/2011

(S. H. Kapadia, C.J.,K. S. Panicker Radhakrishnan and Swatanter Kumar JJ.)

15.04.2011

ORDER

1. It is the case of the Petitioner-Company that it was a victim of unprecedented alleged fraud perpetrated by the former Chairman and the previous management of the Company. The financial statement of the Petitioner-Company were allegedly fudged. Allegedly sales and interest income for several years have been overstated, fictitious deposits allegedly were shown in the balance sheet, which ultimately resulted into investigation by the Government of India under Section 235 of the Companies Act, 1956, under which investigation by Serious Fraud Investigation Office ['SFIO', for short] was ordered. According to the Petitioner, after painstaking investigation, the SFIO Report concluded that the financial statements of the Company showed fictitious sales income and fictitious interest income on non-existent deposits. The SFIO Report also found that the previous Management paid taxes on fictitious income to convey a false impression that the income was genuine. The key findings in one of SFIO Reports are mentioned at Page 331 of Vol. II, which are reproduced hereinbelow:

- a. The former promoters had substantially overstated the revenues and incomes of the Company for several years. The SFIO Report initially quantified overstatement of sales at`4915 crores from 2001-02 to 2007-08. (SFIO Report Volume- I (Part-A) at Para 4.6.39 at pages 265 and 266).
- b. The former promoters of the Company inflated the Balance Sheet by showing a higher amount of interest income on non-existing Fixed Deposits. This falsified interest on non-existing Fixed Deposits from 2001-02 to

September 2008 is `35 920.14 crores (SFIO Report Volume-I (Part-A), at Para 4.2.10).

c. The amount of taxes paid on nonexistent interest on fictitious Fixed Deposits from the year 2001-02 to 2007-08 is` 186.91 crores (See Para 4.2.11 at Table-I at Page 137,138 of SFIO Report (Volume-I). The SFIO Report stated that `186.91 crores is on the conservative side and the actual amount of excess tax paid on non-existent interest on fictitious deposit could be to the tune of `270.33 crores (Para 4.2.14 and 5 4.2.15 of SFIO Report (Volume-I)).

d. The former management caused wrongful loss to the Company by paying taxes on non-existent interest income (Please see Para 4.2.33 of SFIO Report (Volume-I)).

e. The former management submitted falsified financial statements to the Income Tax Department when the Company was under the control of the former promoters (See SFIO Report Volume I at para 4.6.39, page 265).

2. In the circumstances, Petitioner-Company represented to CBDT on 17th March, 2010, 5th August, 2010, 27th October, 2010 and 8th November, 2010, stating that income declared by the earlier management in the Returns of Income had been overstated and tax credit thereon was excessively claimed, as evident from the subsequent Restatement of Accounts at the instance of Company Law Board and consequent upon investigation by SFIO. It was the case of the Company before CBDT that the Department had acted on the basis of false claims of payment of taxes made by the previous management by rectifying the assessment and raising tax demands. The case of the Petitioner was that, in the circumstances, the overstated income in the specified Assessment Years should be reduced.

3. Vide impugned Order dated 10th March, 2011, passed under Section 119 of the Income Tax Act, 1961, CBDT rejected the representation of the Company for re-quantification/re-assessment of income for various years for the reasons given in Para 3 of its impugned Order. However, no hearing was given to the Petitioner-Company and, in the circumstances, the Petitioner-Company moved the High Court by filing a Writ Petition being Writ Petition (C) No. 7718 of 2011 in the Andhra Pradesh High Court. By the impugned Order, the High Court directed the Petitioner-Company to pay `350 crores and to give Bank guarantee for `267 crores,

pending hearing and disposal of Writ Petition. Against the said Order, the Company has come to this Court by way of Special Leave Petition.

4. Having heard learned Advocates on both sides, we are of the view that CBDT, in the peculiar facts and circumstances of this case, ought to have heard the Petitioner-Company, which they have not done. We also find that the representations made by the Petitioner require further details to be furnished and, in the circumstances, we pass the following Order:

(i) Within two weeks from today, the Petitioner-Company will file a comprehensive petition/representation before the CBDT giving all requisite details/particulars in support of its case for re-quantification/re-assessment of income for Assessment Years 2003-2004 to 2008-2009;

(ii) On receipt of the said petition/representation, CBDT will hear the Petitioner-Company and after hearing, dispose of the case within a period of two weeks from the date of hearing. While disposing of the case, CBDT will give reasons in support of its Order; and

(iii) The Chairman of the Company will file an Undertaking by 18th April, 2011, with the Registry of the Supreme Court to furnish Bank Guarantee of the Nationalised Bank in the sum of `617 crores on or before 25th April, 2011. On filing of such Undertaking by the Chairman of the Company, attachment levied by the Department shall stand lifted.

5. In view of the above Order, Shri Harish N. Salve, learned Advocate, on instructions, states that the Petitioner will apply to the High Court for withdrawal of Writ Petition (C) No. 7718 of 2011. We make it clear that we do not express any opinion on the merits of the case. All contentions on both sides are kept open. It will be open to the Petitioner-Company to challenge the order, if they are so aggrieved, passed by the CBDT by adopting appropriate proceedings.

6. The special leave petition is, accordingly, disposed of.