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IN THE HIGH COURT OF DELHI

\+ W.P. (C) NO. 5301/2005

Judgment reserved on : April 25, 2005

% Judgment delivered on : May 27, 2005

M/s. Sony India Ltd.
A-31, Mohan Cooperative,
Indl. Estate,
New Delhi.

....Petitioner

! through: Mr. M.S. Syali, Sr. Advocate,
with Mr. M.K. Giri and Mr.
Satyen Sethi, Advocates.

Versus

$ 1. Commissioner of Income Tax, Delhi-III,
C.R. Building,
I.P. Estate,
New Delhi.

2. Addl. Commissioner of Income Tax
Range-9, C.R. Building, I.P. Estate,
New Delhi.

....Respondents

^ through : Mr. Sanjeev Sabharwal, with
Mr. Vishnu Sharma,
Advocate.

CORAM :
* HON'BLE MR. JUSTICE SWATANTER KUMAR
HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether reporters of local paper may be allowed to see the judgment? Yes.

2. To be referred to the reporter or not? Yes.

3. Whether the judgment should be referred in the Digest? Yes.

SWATANTER KUMAR, J.

1. The petitioner, a limited company, is engaged in the business of marketing, sales and servicing of consumer electronic and audio-visual products in India. The Company is a regular income tax payee. It claims that as on 31st March, 2005, it had assets worth more than 350 crores and its turn-over was more than 840 crores giving a profit of more than 19 crores. For the assessment year 2002-2003, a return declaring income of Rs.8,71,08,860/- was filed by the company on 31st October, 2002. Book profits under Section 115JB of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was calculated at a loss of Rs.34,30,515/-. The return was processed under Section 143 (1) on 25th February, 2003. The assessee filed a revised return on 31st January, 2004 showing an income of Rs.8,67,46,730/- and book profits under Section 115JB of the Act were

shown at a loss of Rs.30,17,013/-. This revised return was processed on 18th June, 2004. The case for the assessment year was taken up for scrutiny and a statutory notice under section 143 (2) was issued and duly served upon the assessee-company. After providing opportunity to the assessee through its representative, the Assessing Officer vide order dated 21st March, 2005 assessed the income of the assessee under Section 143 (3) of the Act at Rs.59,92,40,000/-, after making certain additions and disallowing certain deductions claimed by the assessee. The tax payable on the assessed income was calculated at Rs. 26,52,66,896/-.

2. In furtherance to the order of assessment, the Assessing Officer issued a notice of demand under Section 156 of the Act. However, he reduced the period for payment of the tax to seven days (7) days instead of allowing 30 days, as contemplated under Section 220 of the Act. The notice of demand was issued on that very date i.e. 21st March, 2005.

3. The petitioner has raised a challenge to the legality and validity of exercise of this statutory discretion vested in and by the

Assessing Officer in this writ petition. It is contended by the petitioner that there was no material before the Assessing Officer on the basis of which satisfaction in regard to pre-requisites for enforcing these provisions could be recorded. The exercise of power is not judicious, but is arbitrary or capricious. It is also the contention of the petitioner that there is no reasonable cause, much less any rational nexus in the formation of belief by the Assessing Officer that it would be detrimental to the interest of the revenue if the full period of 30 days was allowed to the assessee for payment of the tax demand. The petitioner is further stated to have suffered great prejudice, as the order being without basis would also result in exposing the petitioner liable for initiation of penalty proceedings and payment of interest in terms of the provisions of the Income Tax Act. Besides, all this the order in question amounts to implied rejection of prayer of the petitioner which the petitioner would be entitled to make in terms of the provisions of Section 220 (6) of the Act which casts an obligation upon the Assessing Officer to consider such a request by passing a speaking order.

4. In response to this case of the petitioner, the respondents have

filed a counter affidavit wherein it is stated that after hearing the company on different issues, the Assessing Officer had passed the assessment order on 21st March, 2005. The different years of assessment for which assessee had filed the returns are 2003-2004 and 2004-2005, and the returns are under scrutiny. However, in the meantime, it came to the notice of the Assessing Officer that the assessee-company, which was carrying on manufacturing and trading activities had stopped manufacturing and shifted over to only carrying out the trading of the products which they were importing from their holding company. There was, thus, containment of business activities on the part of the petitioner-company and the petitioner-company had not paid advance taxes in the assessment year 2005-2006. However, a sum of Rs.432 lakhs was paid on 15th March, 2005. As there was breach of payment of advance taxes and in view of the above-noticed circumstances, the Assessing Officer had reduced the period for payment of the tax due, to 7 days in terms of the jurisdiction vested in the Assessing Officer under Section 220 (2) of the Act. There was huge liability of tax payable by the assessee, therefore, the power has been exercised by the Assessing Officer judiciously and in consonance with the provisions of the Act. The respondents, thus, pray

for dismissal of the writ petition.

5. Answer to rival contentions raised in the present writ petition would obviously lie on a comprehensive discussion on the ambit and scope of the statutory powers vested in the Assessing Officer under Section 220 (1) of the Act. The provisions of law undoubtedly empowers the Assessing Officer to curtail the period for payment of tax, but would it be permissible to read these provisions and hold that there are no limitation on exercise of such power. Before we dilate on various aspects of the provisions of Section 220 of the Act, reference to this Section can usefully be made at this stage :-

> **"When tax payable and when assessee deemed in default.**
> **220.** (1) Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under section 156 shall be paid within [thirty] days of the service of the notice at the place and to the person mentioned in the notice:
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> **Provided** that, where the [Assessing] Officer has any reason to believe that it will be detrimental to revenue if the full period of [thirty] days aforesaid is allowed, he may, with the previous approval of the [Joint Commissioner], direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of [thirty] days aforesaid,

as may be specified by him in the notice of demand.

(2) If the amount specified in any notice of demand under section 156 is not paid within the period limited under sub-section (1), the assessee shall be liable to pay simple interest at [[one] per cent for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (1) and ending with the day on which the amount is paid;]

[**Provided** that, where as a result of an order under section 154, or section 155, or section 250, or section 254, or section 260, or section 262, or section 264 [or an order of the Settlement Commissioner under sub-section (4) of section 245D], the amount on which interest was payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded:]

[**Provided further** that in respect of any period commencing on or before the 31st day of March, 1989 and ending after that date, such interest shall, in respect of so much of such period as falls after that date, be calculated at the rate of one and one-half per cent, for every month or part of a month.]

[(2A) Notwithstanding anything contained in sub-section (2), [the [Chief Commissioner or Commissioner] may] reduce or waive the amount of interest [paid or] payable by an assessee under the said sub-section if [he is satisfied] that-

(i) payment of such amount [has caused or] would cause genuine hardship to the assessee;

(ii) default in the payment of the amount on

which interest [has been paid or] 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 inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.]

(3) Without prejudice to the provisions contained in sub-section (2) on an application made by the assessee before the expiry of the due date under sub-section (1), the [Assessing] Officer may extend the time for payment or allow payment by installments, subject to such conditions as he may think fit to impose in the circumstances of the case.

(4) If the amount is not paid within the time limited under sub-section (1) or extended under sub-section (3), as the case may be, at the place and to the person mentioned in the said notice the assessee shall be deemed to be in default.

(5) If, in a case where payment by instalments is allowed under sub-section (3), the assessee commits defaults in paying any one of the instalments within the time fixed under that sub-section, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other instalment or installments shall be deemed to have been due on the same date as the installment actually in default.

(6) Where an assessee has presented an appeal under section 246 [or section 246A] the [Assessing] Officer may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect

of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

(7) Where an assessee has been assessed in respect of income arising outside India in a country the laws of which prohibit or restrict the remittance of money to India, the [Assessing] Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which, by reason of such prohibition or restriction, cannot be brought into India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation.- For the purposes of this section, income shall be deemed to have been brought into India if it has been utilised or could have been utilised for the purposes of any expenditure actually incurred by the assessee outside India or if the income, whether capitalised or not, has been brought into India in any form."

6. After passing order of assessment in accordance with the provisions of the Act, the Assessing Officer is obliged to raise a demand in terms of Section 156 of the Act. Under Section 220 (1), such a demand shall be paid within a period of 30 days of the service of notice. However, proviso to sub-section (1) empowers the Assessing Office to reduce this period of 30 days and require the assessee to pay the demand within such period, less than a period of 30 days, provided he has reasons

to believe that it will be detrimental to the Revenue if the full period of 30 days is allowed. Furthermore, such notice could be issued with previous approval of the Joint Commissioner, Income Tax. In the event the amount specified in the notice under Section 156 is not paid within the stated period, the assessee is liable to pay simple interest @ 1 % for every month or part thereof. The Chief Commissioner or Commissioner under sub-Section 2A of Section 220 has been empowered to reduce or waive the amount of interest paid or payable by the assessee under sub-section, if he is satisfied of the requirements stated in the provisions. Sub-section (3) grants liberty to an assessee to make an application for extension of time but such an application has to be moved before the expiry of the period stated in the notice and the Assessing Officer has the power to do so. In the event of default and subject to the provisions of sub-Section (1) or (3), the assessee would be treated and deemed to be in default. Sub-section (6) of Section 220 further provides a protection to an assessee who has preferred an appeal under Section 246 of the Act to make an application of the Assessing Officer and request him not to treat the assessee in default in relation to the demand raised during the pendency of the appeal. These various provisions of Section 220 clearly indicate various checks

and balances, which are provided by the Legislature. To impose, and discretion to waive off interest, treat an assessee as a defaulter or not, explicitly indicate the extent of statutory powers vested in the authorities in relation to recovery of a demand raised by the Assessing Officer under Section 156 of the Act. The Assessing Officer exercises quasi-judicial powers vested in him under these statutory provisions. Exercise of such authority would presuppose application of mind with due compliance to the pre-requisites indicated in the provisions. Every quasi-judicial order would require the concerned authority to act in conformity with the provisions as well as ensure that the indicated legislative object is achieved. The fairness in exercise of such powers should not be faulted with on the ground of arbitrariness and non-recording of the satisfaction in conformity to the said provisions. Normally, the assessee would be granted a period of 30 days to discharge his liability of tax. Proviso to Section 220 (1) vests a special power in the Assessing Officer to reduce such period. It is a settled rule of law that proviso to a Section is an exception to the rule and is not a rule in itself. No cannon of statutory construction is more firmly established than that the statute must be read as a whole. Thus, the Section must be read with its exception, as carved

out in the proviso. Proviso is an integral part of the Section. It is attached to the main clause for the purposes of explaining the amplitude of the provisions, as, but for the Section proviso would have no reference. It is an important clause which cannot be ignored as its proper function is to accept and deal with the class of cases which otherwise would fall within the general ambit of the main clause. Its application, however, would be confined to those specific cases which are specifically referred to in it and not beyond. The Supreme Court in the case of ***Ram Narain and Sons Ltd. vs. Asst. Commissioner of Sales Tax and others*** ***AIR 1955 SC 765*** held that the proviso embraces only the field which is covered by the main clause and carves something out of it but never destroys it as a whole and it carves out an exception to that main provision only to which it is connected as a proviso and to no other.

7. Proviso to a Section would normally be controlled by the main Section. Normal function of a proviso is to accept something out of the enactment or to qualify something enacted therein, which but for the proviso would be within the purview of enactment. Grant of 30 days time for payment of demand is the generality of the main Section and statutory

discretion vested in the Assessing Officer provides an exception and takes it out of the main provision by reducing the prescribed period by such proportion as may be considered proper and in the interest of the Revenue. Analysis of various settled principles of interpretation would make it obvious that proviso normally should be construed strictly and more so when it relates to fiscal provisions even inviting penalty consequences, whenever there is default in compliance. Applying reasonableness within the doctrine of strict interpretation, this proviso should be given a meaning which would be read and construed into general harmony with the terms of the consequence.

8. For proper applicability of the proviso to sub-section (1) of Section 220, it will be appropriate to spell out the following essential features:-

(a) Sub-section (1) pre-supposes existence and issuance of a notice under Section 156 of the Act.

(b) The Assessing Officer should have 'reasons to believe that it will be detrimental to the Revenue if the full period of 30 days is allowed'.

(c) Wherever the Assessing Officer intends to reduce such period he would do so with the previous approval of the Joint Commissioner.

9. Discharge of quasi-judicial functions makes it mandatory for the concerned authority to record a reason-based satisfaction. The reasons should have a direct nexus that the order is passed to avoid detriment to the interest of the Revenue. The belief of the Officer should have nexus to the reason for such belief and both these features in turn should have nexus to the interest of the Revenue. The belief thus should not be imaginary or unrelatable to any kind of cogent material on record of the Assessing Officer's file. Such material could relate to anything which comes to the notice of the Assessing Officer during the assessment proceedings or even thereafter. Sub-section (1) grant a statutory right to an assessee to discharge the liability arising from a demand under Section 156 of the Act within a period of 30 days and such right can be taken away under the proviso only if the essential features contained in the language of the Section are satisfied. Reasonableness of 'reason to believe' would be of pertinent importance while the Court is considering

the legality of the order passed by the Assessing Officer in exercise of his powers under proviso to Section 220 (1). The expression 'reason to believe' in common parlance would mean to have sufficient cause to believe. It is not synonymous with subjective satisfaction as it would be open to the court to examine the matter whether 'reason to believe' have a rational connection or a relevant bearing to the formation of the belief. The belief must be held in good faith and cannot be merely pretence. It must be stronger than mere satisfaction. The belief entertained by the Assessing Officer must not be arbitrary or irrational but should be reasonable and in other words, it must be based on reasons which are relevant and material. Adequacy or sufficiency of reasons can hardly be investigated by the Court. Reasonableness, relevancy and good faith are the factors which should be demonstrated in the order itself or at best the record in support thereof. 'Reason to suspect' is not 'reason to believe'. They are terms of apparent definition and cannot be permitted to be interchanged in operation of fiscal provisions. Reasons are the link between the material on which the conclusions are based and they alone can exhibit how the mind is applied to the subject matter for arriving at a decision. Rational nexus between the facts considered and conclusions

reached is the main consideration. 'Reason to believe' must relate to the standards of belief of a reasonable man and not to a pre-judicial or biased mind.

10. In the case of **Thompson vs. Thompson** [1956] 1 All England Reports 603 interpreting the expression 'reason to believe' under Section 19 (3) of the Matrimonial Causes Act, 1950 it was held that the petitioner had no reason to believe that the other party had been living within that time, should be evidence that he or she was not dead until the contrary was proved. The test that whether or not there is 'reason to believe' that the other party has been living must relate to the standards of belief of a reasonable mind and not to those of a particular petitioner. In the case of **Pratap Singh vs. Director AIR 1985 SC 989,** their Lordships of the Supreme Court held that it is open to the Court to examine the question in relation to rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the Section. To that extent it was held that the proceedings initiated by the Taxing Officer under Section 34 would be open to challenge in a Court of law. Still in another case of **Ganga Saran**

vs. ITO AIR 1981 SC 1363, the Supreme Court held "that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully & truly all material facts & the notice issued by him would be liable to be struck down as invalid." Absence of reasons in such decision-making may even *prima facie* suggest misuse of power in the given facts of a case. The reasons must have nexus to the requirements of law. The decision supported by no reasons or reasons without basis, would be inexplicable before the Court and would offend the basic rule of law. Such order would be beyond the jurisdiction vested in the Assessing Officer under Section 220 (1) of the Act.

11. The other expression of significant use by the law framers in the proviso is 'detrimental to revenue'. The dictionary meaning of the word 'detriment' is any loss or harm suffered in person or property. It could also be understood that the promise has, in return of a promise, forborne some legal right which he otherwise would have been entitled to exercise, or that he has given up something which he had a right to keep. 'Legal detriment' again refers to giving up something which immediately

prior thereto the person had the privilege to return. (Black's Law Dictionary, 6th Edition). This expression has been used simply to imply that there should be no loss or injury to the revenue. Loss of revenue would normally refer to non-recovery of its dues or that a demand of tax may not become unrecoverable. The assessee by his acts and deeds may not be able to frustrate the recovery of tax. Intention on the part of the assessee to cause loss or injury to the revenue should be evident from the reasons recorded by the Officer in support of his belief that grant of full period would be detrimental to the interest of the revenue.

12. The proviso has the effect of divesting the assessee of a legitimate right therefore, recourse to such provision has to be for good reasons and with caution. Mere apprehension that dues of the Revenue may not be recoverable without any material or information on the record of the Assessing Officer to support such an apprehension, would in our view be not permissible under the legislative scheme of this provision. We have already noticed that the consequence of default under the provisions of Section 220 are of a severe nature including imposition of interest and penalty. In the normal circumstances, an assessee would have

30 days period to meet this demand and it is only after the expiry of such period that the assessee would entail the liabilities afore-referred. The assessee would still have the right to pray to the Assessing Officer not to treat the assessee as an 'assessee in default' in respect of the demand entries under Section 226 of the Act. Where the assessee would be deprived of seeking recourse to such remedy on the one hand, there on the other he would be exposed to liability of interest and penalty immediately on the expiry of the reduced period. Thus, an order of the Assessing Officer under proviso to Section 220 (1) vests the assessee with serious consequences. Once such are the serious consequences of the default in compliance to the direction for payment of tax in the reduced period, greater would be the obligation upon the Assessing Officer to act fairly and judiciously. There has to be definite cause or reason before the Assessing Officer capable of being understood by the person of common prudence that but for such an order there will be detriment to the Revenue. In other words, the recovery of the demand raised by the Revenue is likely to be defeated if the full prescribed period is granted to the Assessee. Invocation of such provisions in a routine or a mechanical manner would not be permissible. The language of the Section does not suggest that

legislature intended to arm the Assessing Officer with powers *carte blanche*. Higher the power, greater is the obligation to act judiciously. Reason is the sole of any judicious order. The order supported by record should demonstrate existence of a proper cause as contemplated in the language of the law. Validly the reasons or cause should not be merely apprehensive or remote in their substance. To validly enforce its statutory discretion, the Assessing Officer must have (a) Relevant and valid reasons for forming a belief and (b) The belief must have a direct nexus to the conclusion that grant of full period of 30 days to the assessee for payment of tax would be detrimental to the revenue. Both these ingredients are *sine qua non* for appropriate compliance to the relevant provisions and violation thereof would be *cuasa sine qua non* and would defeat the very basis of quasi-judicial exercise of power by the Assessing Officer. Despite the fact that inbuilt balances and checks have been provided in the Section itself, compliance to basic rule of law would be mandatory to counter-balance the extent of discretion vested in the Assessing Officer.

13. To discuss this aspect in some further elucidation, it may be

appropriate to refer to certain illustrations whether mischief would be covered under proviso to Section 220 (1):- (i) If an assessee is intending to leave the territorial jurisdiction with intention to evade payment of demand. (ii) A case where an assessee is liquidating his assets, except in due course of its business; again with the intention of evading to pay tax and defeat the demand raised under Section 156 of the Act, (iii) An assessee is intending to leave the country; (iv) Is doing such act and deeds which would render it impossible for the Revenue to recover its dues on account of arrears or current demand, and (v) Closing of business by the assessee coupled with such other factors as may be deemed relevant by the Assessing Officer to reach to a conclusion that in the interest of the Revenue, period should be curtailed.

14. These are mere illustrations and are not intended to give any exhaustive dimensions to the limitations on the powers of Assessing Officer under these provisions. These reasons supported by record of the Assessing Officer could constitute a valid cause for invoking the provisions of Section 220 (1) of the Act. Analogous to these illustrative cases are the provisions of Order 48 of the Code of Civil Procedure.

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Under Order 38 Rule 1, at any stage of the suit where the Court is satisfied that the defendants with an intention to delay or to avoid any process of Court or obstruct or delay the decree that may be passed against the defendant, the defendant has absconded or left the limitations of the jurisdiction of the court, is about to do so or has disposed of or removed his property or any part thereof under the jurisdiction of the Court, the court could issue a warrant of arrest with a direction that such defendant be brought before the Court and be directed to furnish security subject to such terms and conditions as the court may deem fit and proper. Under different rules of this Order 38, vast powers have been vested in the Court in relation to the defendant as well as the property in suit, or both. Attachment before judgment is one of the known concepts. In civil law, this jurisdiction is quite familiar and the procedure is known as *saisie conservatorie* whereby the assets of a debtor may be impounded before a judgment, and orders commonly known as *Mareva Injunction* often practiced in British, Australian and even in Indian law under the provisions of the said order. Even if a power to pass an order or grant an injunction is vested it would be granted only if it is right to do so. Legal and equitable consideration should weigh with the Assessing Officer for

taking a final view as to whether in the facts and circumstances of a given case, the Assessing Officer ought or ought not to reduce the period granted to the assessee for meeting the demand under Section 220 (1) of the Act.

15. The Supreme Court of India in the case of **Kishan Lal vs. Union of India and Anr. JT 1998 (1) S.C. 317** while dealing with scope of judicial review of an order passed under Section 220 (2A) of the Act and the necessity on the part of the Assessing Officer to state reasons for exercise of such jurisdiction held as under:-

> "Even though in the said sub-section it is not stated that any reasons are to be recorded in the order deciding such an application, it appears to us that it is implicit in the said provision that whenever such an application is filed the same should be decided by a speaking order. Principles of natural justice in this regard would be clearly applicable. It will be seen that a decision which is taken by the authority under Section 220 (2A) can be subjected to judicial review, as was sought to be done in the present case by filing a petition under Article 226, this being so and where the decision of the application may have repercussion with regard to the amount of interest which an assessee is required to pay it would be imperative that some reasons are given by the authority while disposing of the application. Mr.

Salve, has strongly relied upon the observations of this Court in *The Siemens Engineering and Manufacturing Co of India Ltd. v. Union of India & Anr.* (1976) 2 SCC 981 where at page 986 it has been stated that where an authority makes an order in exercise of tis quasi judicial function it must record its reasons in support of the order it makes. In other words, every quasi judicial order must be supported by reasons. In our opinion, the observations in that case would apply in the present case also."

16. The order passed should be self-explanatory or at least there should be material before the Assessing Officer before he could invoke the powers vested in him under this provision. If the order contains no reason and there is no material for issuing such a direction on the record of the Assessing Officer, the order would offend the basic rule of law and the principles of natural justice.

Now, we may refer to the reasons which persuaded the Assessing Officer to reduce the period of 30 days to 7 days in this case, as they appear from the record produced before the Court. On 21st March, 2005, after passing an order under Section 143 (3) of the Act, the Assessing Officer further made the following order:-

> "It has been gathered that the assessee company is winding up its manufacturing activities in the country. There has also not been any payments of advance tax on the due dates, viz 15th June, 2004, 15th September, 2004, and 15th December, 2004. For the due date 15th March 2005 also, there is no information as on date regarding any payment having been received on account of advance tax from the assessee. Since a substantial demand of Rs.26,52,66,896/- has been raised pursuant to the finalization of the assessment proceedings for A.Y. 2002-2003, I have reasons to believe that it will be detrimental to revenue if the full period of thirty days is allowed. Therefore, as per the proviso to section 220(1) of the Income Tax Act, 1961, a reduced period of seven days (7) has been given to the assessee in the notice of demand in the prescribed form (ITS 7)."

17. The challenge to this direction is raised on behalf of the petitioner on the ground that the said order proceeds on certain assumptions and presumptions which were factually incorrect. The order is arbitrary exercise of power and in fact has vested the petitioner with pre-judicial consequences without requiring the petitioner to put forward his case in regard to the doubts in the mind of the Assessing Officer.

18. During the course of hearing the respondents had produced the original records to substantiate their stand that the order under Section

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220 (1) of the Act has been passed in proper exercise of jurisdiction and in the interest of the revenue. From the order sheet in the file of the Assessing Officer, it appears that on 26th October, 2004, a representative of the assessee had appeared and the Assessing Officer had required the representative to furnish certain details including a brief note on business activity, detail of bank accounts, addition to the fixed assets amongst other requirements. On 8th November, 2004 a letter on behalf of the assessee was filed. However, the Assessing Officer had served a further questionnaire upon the assessee to supply more details. These details were filed by the representative of the assessee on 13th January, 2005. On 11th March, 2005 in the order sheet recorded by the Assessing Officer it is nowhere recorded that details furnished by the assessee were not satisfactory or that the questions posed had not been answered. Different queries were raised on the hearing of 11th March, 2005 in regard to provision for leave encashment, details of other income, details of LADT and to explain the allowability of prior period expenses of Rs.6,81,551/-. This query continued and even on 16th March, 2005 certain other queries were raised by the Assessing Officer upon representation of the assessee. It may be useful to notice here that being satisfied of furnished details and

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attitude of the assessee, the Assessing Officer on 16th March, 2005 while dropping the penalty proceedings passed the following order:-

> "Considering the oral submissions of the A/R and the subsequent promptness in furnishing details as requisitioned, penalty proceedings u/s 271 (1) (b) is hereby dropped."

19. Again a show cause notice was served on 21st March, 2005 after passing the order of assessment under Section 143 (3) of the Act, the Officer recorded that penalty proceedings have been initiated separately and copy of the order be furnished to the assessee giving seven days time for payment of the demand.

20. There are two reasons which have been stated by the Assessing Officer while issuing the impugned order. Firstly, that it has been gathered that the petitioner-company is winding up its manufacturing activity in the country, and secondly, that it had not paid any payments of advance tax on the due dates including 15th March, 2005. These reasons have been recorded by the Officer on 21st March, 2005. While recording the second reason it has been specifically noticed by the Assessing Officer

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that there was no information as on date regarding any payment having been received on account of advance tax from the assessee. This reason is factually incorrect. It is not even disputed before us that on 15th March, 2005 the petitioner-company had deposited advance tax to the extent of Rs.4.32 crores. In regard to previous installments of advance tax, no query was raised on the assessee by the Assessing Officer and they had no occasion to explain their case to the authorities. It has been stated on affidavit before us that non-payment of three installments of advance tax for the assessment year 2005-06 was neither on account of any slump in business nor on account of discontinuance of the business activity but was on account of disputed entry tax liability being charged in terms of "Haryana Local Area Development Tax Act, 2000" wherein the manufacturing unit of the assessee is stated to be located. In regard to the first reason, the assessee has stated that the discontinuance of manufacturing operation was a result of the issuance of notification and promulgation by the Government of Haryana Local Area Development Tax Ordinance wherein a tax of 4 % was imposed on entry of goods imported into local area for consumption and/or use. The manufacturing unit was located in District Riwadi of State of Haryana and it facilitated

import and it was possible for the assessee to maintain international quality standards, import component in the goods manufactured was quite high since it was close to 'Inland Container Depot', Delhi. The controversy was subject matter of writ petition before the Bench of Haryana High Court at Chandigarh in CWP No. 770/2002 and CWP No. 8355/2002. The entry tax for the relevant financial years for 2001-2005 would be approximately Rs.24.79 crores. Keeping this to be a deductable expense in computing income for the relevant years, the first three installments of the advance tax were not paid. It is also the case of the assessee that the reduction in manufacturing activity did not actually adversely effect the total turn over or business of the company as the trading activity was considerably enhanced. According to the petitioner there was no material, much less valid reasons, before the Assessing Officer to believe that grant of normal period for meeting the demand of tax would be detrimental to revenue.

21. In terms of the directions issued by the Assessing Officer, the assessee had furnished a complete details in regard to note of business activity, details of bank accounts, addition to fixed assets including the

fact that in addition to providing clarification to all other question raised by the Assessing Officer. From the reading of the order sheet, it is clear that the Assessing Officer did not record his dis-satisfaction in regard to these matters which obviously has a connection to the reasons provided in the above noting leading to passing of the order under Section 220 (1) of the Act. The respondents have not placed on record any material to show that the manufacturing activity was reduced by the company with an intention to evade payment of tax due from the assessee. While one reason is factually incorrect, the other is without any foundation. The Assessing Officer could have easily called upon the assessee to show the proof if the assessee had paid the advance tax on 18th March, 2005 or even 21st March, 2005, when admittedly the representative of the assessee had appeared before the Assessing Officer. In the counter affidavit before us, it is admitted that installments of advance tax were paid by the assessee on 15th March, 2005. This fact, the Assessing Officer could even departmentally verify but no attempt was made by him in this direction. Therefore, this could not be treated as a valid ground for reduction of the period in terms of the proviso to Section 220 (10 of the Act. The reasons recorded by the Assessing Officer for forming an opinion that it would be

detrimental to the revenue to grant full period were relevant material and had a direct bearing on the object of the Section.

22. The provisions of proviso to Section 220 (1) of the Act is an exception to the Rule entitling the assessee to pay the demand of tax within 30 days. The reasons to believe 'should be cogent and proper reasons' and should not be imaginary or without any record'. The reasons to believe of the Assessing Officer should be relatable to the record on the file. It is not expected of the Assessing Officer to record detailed reasons in the order but the formation of belief should be record-based reasons that grant of full period would be detrimental to the revenue.

23. In the present case the reasons were factually not correct and secondly there was no material before the Assessing Officer which can lead a person of common prudence to believe that the demand would become unrecoverable or that it would otherwise be detrimental to the revenue. The provisions of Section 220 have an inbuilt mechanism to prevent the assessee from evading the tax demand. To avoid interest and

penalty, the assessee should pay the demand within the stipulated period.

24. This would further cast an obligation upon the Assessing Officer to form his belief on valid grounds. The belief of the Assessing Officer should not be based on untenable apprehensions or assumptions. Record-based reasons leading to such a belief would help in really protecting the interest of the revenue and that too without generating unnecessary litigation and burdening the assessee with avoidable pre-judicial consequences.

25. In the facts and circumstances of the present case, we are of the considered view that the reasons to believe that grant of full period of 30 days for payment of tax to the assessee would be detrimental to revenue, are mere assumptions than a reality, as reflected from the records produced before the Court. Thus, we would quash the order-cum-direction issued by the Assessing Officer dated 21st March, 2005 reducing the period for payment of tax demand raised upon the assessee under Section 156 of the Act.

26. The writ petition is allowed in the above terms, while leaving the parties to bear their own costs.

SWATANTER KUMAR
(JUDGE)

MADAN B. LOKUR
(JUDGE)

May 12th 2005
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Certified that the corrected copy of the judgment has been transmitted in the main Server.