



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) 3762/2007**

Reserved on: 8<sup>th</sup> December, 2009

% Date of Decision: 11<sup>th</sup> February, 2010

**P.P.C. BUSINESS & PRODUCTS PVT. LTD.** ..... Petitioner

Through: Mr. R.M. Sinha with Mr. Rajiv  
Saxena, Advocates.

*versus*

**CHIEF COMMISSIONER OF INCOME TAX** ..... Respondent

Through: Mr. Subhash Bansal, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE A.K. SIKRI**

**HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**

- |    |   |      |
|----|---|------|
| 1. | Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to the Reporter or not?                                | Yes. |
| 3. | Whether the judgment should be reported in the Digest?                | Yes. |

## **J U D G M E N T**

***SIDDHARTH MRIDUL, J.***

**1.** The present writ petition under Article 226 of the Constitution of India, seeks setting aside and quashing of the order dated 7<sup>th</sup> March, 2006, passed by the Chief Commissioner of Income Tax under Sections 234A, 234B and 234C of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), being violative of the circular of the Central Board of Direct Taxes (in short 'the Board') dated 23<sup>rd</sup> May, 1996.



2. The brief facts as are necessary for the adjudication of the present petition are that:

- (a) A raid was conducted on the Petitioner-company by the Central Bureau of Investigation (CBI) on 1<sup>st</sup> April, 2001 and 3<sup>rd</sup> April, 2001. The CBI froze the bank account of the Petitioner-company on 8<sup>th</sup> April, 2001 and also seized the books of accounts and other documents of the company. Eventually, by an order dated 13<sup>th</sup> June 2001 the special court permitted the Petitioner to operate the bank account.
- (b) The Petitioner submitted the tax audit report for the assessment year 2001-02 on 31<sup>st</sup> October, 2001, purportedly on the basis of electronic record available with the Petitioner. The Petitioner also filed the tax audit report in respect of the assessment year 2002-03 on 29<sup>th</sup> October, 2002. On 31<sup>st</sup> March, 2003 the Petitioner submitted the income tax return for the assessment years 2001-02 and 2002-03 and deposited the income tax amounting to Rs.5,20,542/- and Rs.8,77,499/- respectively on self assessment basis.
- (c) On 22<sup>nd</sup> May, 2003, the Petitioner filed a petition for waiver of the interest on income tax for the assessment years 2001-02 and 2002-03, relying upon the notification dated 23<sup>rd</sup> May, 1996 issued by the Board. The Chief Commissioner of Income Tax rejected the petition filed by



the Petitioner vide the impugned order dated 8<sup>th</sup> March, 2006 and directed the Petitioner to pay interest on the income tax.

3. The main contention urged on behalf of the Petitioner is that, on account of the unavoidable circumstances, i.e. that all the books of accounts and other documents being seized by the CBI in the raid on 1<sup>st</sup> April, 2001 and 3<sup>rd</sup> April, 2001, and also because of the freezing of the bank account of the Petitioner on 8<sup>th</sup> April, 2001, it was not possible for the Petitioner to deposit the advance income tax or file the returns in time for assessment years 2001-02 and 2002-03. It is, therefore, argued that the impugned order is erroneous in coming to a conclusion that the account books were available with the Petitioner who did not file the same.

4. Per contra, the Department supported the impugned order and filed a counter affidavit.

5. In the present case it is noticed that the Petitioner relies on the said notification dated 23<sup>rd</sup> May, 1996 issued by the Board which, *inter alia*, provides as follows:

“2. The class of incomes or class of cases in which the reduction or waiver of interest under section 234A or Section 234B or as the case may be, section 234C can be considered, are as follows:

(a) Where during the course of proceedings for search and seizure under section 132 of the Income-tax Act, or otherwise, the books of account and other incriminating documents have been seized and for reasons beyond the control of the assessee, he has been unable to furnish the return of income for the previous year during which the action under section 132 has taken place, within the time specified in this behalf and the Chief Commissioner, or as the case may be, Director-



General is satisfied having regard to the facts and circumstances of the case that the delay in furnishing such return of income cannot reasonably be attributed to the assessee.”

**6.** A plain reading of the relevant portion of the circular clearly stipulates that, where the books of accounts and other documents have been seized during the course of proceedings for search and seizure under Section 132 of the Act or otherwise, and for reasons beyond the control of the assessee, the latter has been unable to furnish return of income for the previous year during which the search and seizure under Section 132 of the Act has taken place, within the period specified, the Chief Commissioner of Income Tax may grant reduction or waiver of interest under Section 234A or Section 234B or Section 234C, on being satisfied that the delay in furnishing such return of income was not due to fault of the assessee. In this behalf, it is observed that admittedly the tax audit report for the assessment years 2001-02 and 2002-03 were filed on 31<sup>st</sup> October, 2001 and 9<sup>th</sup> October, 2002 respectively. However, the Petitioner filed the income tax returns for the said assessment years and deposited the income tax therefor, only on 31<sup>st</sup> March, 2003. In this behalf it is seen that a tax audit report is mandatorily prepared by an independent auditor based on the documents and accounts produced by the assessee, and as such it would not have been possible for the Petitioner to file the tax audit reports on 31<sup>st</sup> October, 2010 and 29<sup>th</sup> October, 2002, without submitting the necessary documents for verification by the independent auditor, who issued the tax audit reports. Therefore, unless the books of accounts or relevant details



thereof maintained by the assessee were produced for the examination of the tax auditor, it would not have been possible for the independent auditor to prepare the tax audit reports. Thus, the plea of the Petitioner that the assessee was not able to file his income tax returns for the said years in time, is without any merit. The Petitioner was obviously possessed of the said relevant details.

7. Further, it is seen that advance tax is paid during the relevant financial year itself, and the raid on the Petitioner's premises by the CBI took place on 1<sup>st</sup> and 3<sup>rd</sup> April, 2001, whereas the relevant financial year for assessment year 2001-02 ended on 31<sup>st</sup> March, 2001. In other words, the appointed time for the payment of advance tax for the assessment year 2001-02 had long since gone prior to the date of the search and seizure by the CBI. As aforesaid, since the said relevant details were available with the Petitioner, to enable the tax auditor to file the report, it was always possible for the Petitioner to pay advance tax even on estimated basis, which was not done by the assessee. Furthermore, it is relevant to observe that for the assessment year 2002-03 the installments of advance tax were due on 15<sup>th</sup> June, 2001, September, 2001, December, 2001 and March, 2002 and the bank account of the Petitioner had already been defrozen on 13<sup>th</sup> June, 2001. Therefore, the plea of the Petitioner that he could not deposit the advance tax for the assessment years 2002-03 on the ground of financial hardship also does not hold water.

8. It is also to be noticed that despite being directed to do so the Petitioner failed to produce the Panchnama showing that the books of



accounts were seized by the CBI, before the Income Tax Department.

**9.** From the foregoing discussion, it is axiomatic that the Petitioner was not prevented from furnishing the return of income and paying the advance tax for the said assessment years, within the time specified in that behalf, so as to be able to justify its claim of entitlement to waiver of interest within the meaning of the said notification dated 23<sup>rd</sup> May, 1996. In the circumstances, we do not find any infirmity or error in the impugned order so as to warrant interference by this Court under its extraordinary jurisdiction under Article 226 of the Constitution of India. The petition is devoid of merit and is, consequently, dismissed with costs quantified at Rs.10,000/- (Rupees ten thousand).

**SIDDHARTH MRIDUL, J.**

**A.K. SIKRI, J.**

**FEBRUARY 11, 2010**

*mk*