



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

+ **Writ Petition (Civil) No.6933/2007**

% **Date of Decision:** September 02, 2011

CLASSIC PAPERS CONVETERS P.LTD. .... Petitioner  
Through Mr. R.N. Mehta and Mr. Sunil  
Goyal, Advocates.

versus

COMMISSIONER OF INCOME TAX I DELHI .... Respondent  
Through Mr. Sanjeev Sabharwal, Advocate.

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**

**ORDER**

M/s. Classic Paper Converters Pvt. Ltd. has filed the present writ petition for quashing of notices dated 23<sup>rd</sup> December, 2005 and 8<sup>th</sup> December, 2006 issued by the Income Tax Officer, Ward-3(2), New Delhi and the rectification order dated 25<sup>th</sup> January, 2007, which was also passed by the same officer.

2. The petitioner contends that the respondents cannot levy interest under Section 220(2) of the Income Tax Act, 1961 (for short, 'the Act') and accordingly the two show cause notices under Section 221(1) of the Act should be quashed.



3. For the assessment years 1994-95 and 1995-96, addition of Rs.5,00,950/- and Rs.6,44,876/- was made by the Assessing Officer disallowing the tour expenses of one of the directors of the petitioner, who had visited USA, Canada and UK. The petitioner in the profit and loss account had shown income of Rs.37,80,000/- from sub-letting of space to a third party after taking a premises on lease from the director of the company, who had gone abroad. The aforesaid addition was deleted by the CIT (Appeals), but was confirmed by the Income Tax Appellate Tribunal vide orders dated 19<sup>th</sup> April, 2004 and 29<sup>th</sup> April, 2004. The petitioner did not challenge the said orders and the additions attained finality.

4. Penalty under Section 271(1)(c) of Rs. 2,59,240/- and Rs. 2,96,643/- for assessment years 1994-95 and 1995-96 were imposed and were sustained in the first appeal. The petitioner did not file any further appeal and the orders imposing penalty have attained finality. The petitioner had filed an application under Section 273A of the Act for waiver of penalty, which was dismissed. Challenge to the said order has not been accepted in W.P.(C) No. 14320/2006, which has been disposed of by us today. The order dismissing the application for waiver of



penalty under Section 273A of the Act has been upheld. It is, therefore, clear that the demands both on account of additional tax and penalty of Rs.2,59,240/- and Rs.2,96,643/- have to be paid by the petitioner.

5. The petitioner claims that after the assessment orders were passed, notice of demand under Section 156 of the Act was issued to the petitioner. However, the said notice of demand stood nullified once the Commissioner of Income Tax (Appeals) deleted the additions. In this connection, reliance is placed on the decision of the Supreme Court *Vikrant Tyres Ltd. Vs. First Income-Tax Officer*, [2001] 247 ITR 821 (SC).

6. The respondent, on the other hand, has submitted that the said decision will only apply in case demand had been paid in full at the initial stage. However, when demand has not been paid in full, in view of Section 3 of the Taxation Law (Continuation and Validation of Recovery Proceedings) Act, 1964, the earlier notice under Section 156 of the Act stands revived. In this connection, they have relied on the decision of the Kerala High Court in *Indira Rani (B.) Vs. Commissioner of Income Tax (Ker)* [1999] 237 ITR 20 (Ker).



7. During the course of arguments today, learned counsel for petitioner has submitted that the tax demands as raised under Section 156 of the Act were initially paid. He states that he has been able to locate original papers for demand in this regard. He has further stated that for the two years in question about Rs.25,00,000/- and Rs.6,50,000/- have been claimed and demanded as interest for the years 1994-95 and 1995-96 respectively. He submits that the petitioner would like to file an application for waiver of interest under Section 220(2A) of the Act, if required and necessary.

8. As far as notices dated 23<sup>rd</sup> December, 2005 and 8<sup>th</sup> December, 2006 are concerned, these are show cause notices, which have been issued to show cause why penalty under Section 221(1) of the Act for failure to deposit the tax should not be imposed. As these notices are/were show cause notices, we do not see any reason to interfere at this stage. However, as far as the order dated 25<sup>th</sup> January, 2007 is concerned, the said order was passed under Section 154/254 of the Act for rectification.

9. We have examined the order dated 25<sup>th</sup> January, 2007 and find that the order is non-speaking and non-reasoned. It does not deal with



the various contentions and issues raised. The judgments referred above have not been considered and examined. As noticed above, the petitioner has now contended that the demands were in fact paid. Another question which may arise is whether these demands were fully or partly paid and the effect of part payment, if any. As facts have not been discussed and stated in this order, we are not inclined to examine the case law relied upon and answer any question on hypothetical basis. Accordingly, the writ petition is partly allowed and the order dated 25<sup>th</sup> January, 2007 is set aside and the matter is remitted. To cut short the delay, the petitioner will appear before the Assessing Officer on 30<sup>th</sup> September, 2011 at 2 p.m., when a date of hearing will be given. The application for rectification will be disposed of within four months from 30<sup>th</sup> September, 2011. It is open to the petitioner to file an application under Section 220 (2A) of the Act, if so advised and necessary.

The writ petition is accordingly disposed of without any order as to costs.

**SANJIV KHANNA, J.**

**CHIEF JUSTICE**

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