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

+ W.P.(C) 8441/2007

SUPER CASSETTES INDUSTRIES LTD. Petitioner
Through Mr. Ajay Vohra with Ms.
Kavita Jha, Adv.

versus

CHIEF COMMISSIONER OF INCOME TAX ..Respondent
Through Mr. Kiran Babu, Sr. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V.EASWAR

ORDER
26.03.2012

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Super Cassettes Industries Ltd. has filed the present writ petition for quashing order dated 08.06.2007 passed by the Chief Commissioner Income Tax (Central) under Section 234C read with Section 119(2) of the Income Tax Act, 1961 (Act, for short). The impugned order rejects application for waiver of interest under Section 234C in respect of advance tax installments due and payable on 15.12.1998 and 15.09.1999 in respect of Assessment Year 1999-2000 and 15.06.1999 and 15.09.1999 in respect of Assessment Year 2000-2001.

2. In respect of two defaults relating to Assessment Year 1999-2000, the petitioner is liable and has paid interest of



Rs.16,91,786/- and Rs.1,76,905/-. With regard to tl
Assessment Year 2000-2001, the petitioner was asked and has
paid interest of Rs.7,18,368/-.

3. The Chief Commissioner of Income Tax (Central) while rejecting the application has observed that the request for waiver of interest was made as per application dated 16.11.2006. Accordingly, she declined and did not apply the Instructions dated 23.05.1996 relied and referred to by the petitioner and held that the same cannot be invoked. She had accordingly applied instructions dated 26.06.2006. She further observed that the case law applied by the petitioner was different and therefore not applicable to the assessee's case. The exact reasoning given by her, reads:

“As mentioned in the preceding paras, the assessee company has requested for waiver of interest as per application dated 16.11.2006. In this connection, it may be pointed that as on the said date the instruction 23.5.1996 referred to by the assessee are not in vogue. Thus, the assessee's plea that its case may be decided as per Board's Instruction dated 23.5.1996, is not tenable. Further, the assessee's case for waiver of interest U/s 234C also does not stand covered in the light of existing instruction dated 26.6.2006. The case laws cited by the Ld. Authorised Representative in support of assessee's case are also on different footing and hence are not applicable



to the assessee's case.”

4. There is a substantial difference between the circular/instruction dated 23.05.1996 and the subsequent circular/instructions dated 26.06.2006 with reference to the facts in question. In the earlier circular dated 23.05.1996, clause (b) stipulated as under:-

“In exercise of the powers conferred under clause(a) of sub-section (2) of section 119 of the Income-tax Act, 1961, the Central Board of Direct Taxes hereby direct

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that the Chief Commissioner of Income-tax and Director General of Income tax may reduce or waiver interest charged under section 234A or section 234B or section 234C of the Act in the classes of cases or classes of income specified in paragraph 2 of this order for the period and to the extent the Chief Commissioner of Income-tax/Director-General of Income tax deem fit. However, no reduction or waiver of such interest shall be ordered unless the assessee has file the return of income for the relevant assessment year and paid the entire tax due on the income as assessed except the amount of interest for which reduction or waiver has been requested for. The Chief Commissioner of income tax or the Director-General of Income-tax may also impose any other conditions deemed fit for the said reduction or waiver of interest.

2. xxx xxx xxx xxx xxx xxx



(a) xxx xxx xxx xxx xxx xxx

(b) Where during the course of search and seizure operation under section 132 of the Income-tax Act, cash is seized which is not allowed to be utilized for payment of advance tax instalment or installments as they fall due after the seizure of cash and the assessee has not paid fully or partly advance tax on the current income and the Chief Commissioner or the Director-General is satisfied that the assessee is unable to pay the advance tax.”

5. Circular/instructions dated 26.06.2006 does not have any clause similar to clause (b) of the earlier circular/instructions dated 26.06.1996 in respect of cash which is seized and which was not allowed to be utilized for payment of advance tax installment or installments if they fell due after the seizure of cash.

6. The learned counsel for petitioner is right in his contention that normally instructions/circulars applicable or in force on the first date of the assessment year should be applied, unless there are good reasons or the intendment to the contrary is so stipulated or can be clearly implied. Circular/instructions issued under Section 119 of the Act are primarily to serve guidelines and are binding on the subordinate authorities visited with administration of the Act. Sometimes a circular confers rights and benefits on the assessee with reference to



assessment/taxation. The board certainly has right to withdraw or recall the circular, but normally the circulars prejudicially affecting the rights of the parties should not be withdrawn or recalled with retrospective effect. (see **BASF (India) Ltd. And Another v. W. Hasan, Commissioner of Income-Tax And Others [2006] 280 ITR 136 (Bom)**, **Commissioner of Income-Tax v. B.M. Edward, India Sea Foods [1979] 119 ITR 334 (Kerala)**, **Commissioner of Income Tax v. N.T. Ramarao (H.U.F.) [1984] 163 ITR 453 (AP).**)

7. In these circumstances, we cannot agree with the reasoning given by the Chief Commissioner of Income Tax (Central) that the application for waiver of interest dated 16.11.2006 should be decided in terms of and as per the Board's instruction dated 26.06.2006 and not in terms of the Board's Circular/instruction dated 23.05.1996. There are several reasons stated below why in the present case, the instructions dated 23.05.1996 should be applied.

8. FDRs worth Rs.29 crores were seized on 10.12.1998 pursuant to search and seizure under Section 132 of the Act. The next installment of advance tax for the Assessment year 1999-2000 was due and payable on 15.12.1998. The petitioner



it is stated had issued a cheque of Rs.7 crores for payment said installment but the same could not be honoured and paid because the FDRs were seized. The petitioner has placed on record before us letters dated 16.12.1998 and 23.02.1999 which have not been disputed by the Revenue praying for release of the FDRs for payment of the advance tax installment. The first letter dated 16.12.1998 was written to the CIT(Central) with copy to Director General of Income Tax (Investigation). The second letter was written to the Deputy Commissioner of Income Tax (Central), the then Assessing Officer. The two letters have not been considered and examined by the CIT(Central) while rejecting the said application. We may note that the FDRs were subsequently released and were not considered as undisclosed income.

09. We may also note that the department had released FDRs worth Rs.6 crores on or about 17.02.1999 and the said amount was utilized towards payment of advance tax on 17.02.1999. Similarly, some further FDRs were released on or about 15.03.1999 and an amount of Rs.1.5 crores was paid as advance tax on the said date.

10. In these circumstances, we feel that the assessee is entitle



to waiver of some/proportionate interest under Section 234C terms of the Boards Circular dated 23.05.1996. On the question of quantum, we feel that the assessee had also earned interest on the FDRs and the same was paid to the assessee. However on the interest amount, the petitioner/assessee would be liable to pay income tax as income had accrued.

11. Keeping in view the aforesaid aspects, we feel that the assessee is entitled to waiver of interest under Section 234C to the extent of 40% for the Assessment Year 1999-2000 in respect of installment due and payable on 15.12.1998 and 15.03.1999.

12. As far as Assessment Year 2000-2001 is concerned, we notice that the application for waiver of interest was made on 16.11.2006. However, before the said date, the assessee had written two letters dated 14.06.1999 and 24.06.1999 for lifting of restrained orders under Section 132(3) and thereafter another letter dated 08.09.1999 was written.

13. The petitioner had written to the Commissioner of Income Tax, Delhi (Central) vide letter dated 14.6.1999 for adjustment of advance tax installment of Rs. 2 crores against the FDRs which were subject matter of the restrain order. It was further stated that they would not be liable to pay interest under Section 234B



and C in case the advance tax cannot be paid on or before due date. The said FDRs were not released and adjusted. In the letter dated 24.6.1999, it was stated that they have been informed that two FDRs of Rs. 1 crore each, which were subject matter of the restraint order, would be adjusted and utilized towards payment of advance tax. A request was made that this should be done at the earliest. The Assessing Officer, Deputy Commissioner of Income Tax (Central) then wrote to the assessee that the discharged FDRs should be furnished to him so that they can be sent to the respective banks for encashment. The contention of the assessee, however, is that one FDR was released, but the second FDR of Rs.1 crore, which was directed to be released, was not released and this factum is mentioned in the letter dated 9.9.1999. With regard to the installment payable on 15.9.1999, it is pointed out that the assessee had written letter dated 8.9.99 stating that they had estimated the advance tax liability as Rs.8.9 crores out of which Rs.2 crores had to be paid as the first installment. They requested for release of the seized FDRs totaling Rs.6.9 crores towards appropriation of the advance tax liability. There was no response or reply to this letter. For the assessment year 2000-01, the advance tax of Rs.1 crore was paid on 14.6.1999 and subsequently advance tax of Rs.8 crores was paid in two installments on 9.9.1999 and 22.10.1999. These payments were made after the FDRs were released. There is no dispute about payment of advance tax installments on 15.12.1999 and 15.3.2000.

14. In view of the aforesaid position and in view of the same reasons as recorded for the assessment year 1999-2000, we



hold that the petitioner is entitled to waiver of interest under Section 234C to the extent of 40% in respect of the installments due and payable on 15.6.1999 and 15.9.1999 for the assessment year 2000-01.

15. In view of the aforesaid position, we partly allow the writ petition and issue a writ of certiorari quashing the order dated 8.6.2007 passed by the Chief Commissioner of Income Tax (Central) to the extent indicated above. The Assessing Officer will accordingly compute the demand, if any, payable and within four weeks of communication thereof, the petitioner will pay the demand. In case any amount is refundable to the petitioner, the same would be refunded within eight weeks from the date of communication of this order to the Chief Commissioner of Income Tax (Central).

The writ petition is disposed of. No order as to costs.

SANJIV KHANNA, J.

R.V. EASWAR, J.

MARCH 26, 2012
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