REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5950 OF 2008
(Arising out of SLP (C) No. 4091 of 2007)

B.M. MALANI … APPELLANT

Versus

COMMR. OF INCOME TAX & ANR. … RESPONDENTS

J U D G M E N T

S.B. Sinha, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 27.7.2006 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Petition No. 2672 of 2003 whereby and whereunder the Writ Petition filed by the appellant herein against an order dated 26.11.2002 passed by the Commissioner of Income Tax rejecting the application filed by the appellant herein under Section 220 (2-A) of the Income Tax Act, was dismissed.

3. Appellant had been carrying on money-lending business and trading in shares and securities. On or about 4.9.1994, a raid was conducted in his residential premises by the authorities in exercise of their power under Section 132 of the Income Tax Act (for short, "the Act"). Amongst others, shares worth market value of Rs. 61.38 lakhs and a demand draft worth Rs. 10 lakhs in the name of PAN Clothing Company Limited were seized. By a letter dated 15.12.1994, a declaration was made by the appellant in terms of sub-Section (4) of Section 132 of the Act, by reason whereof he opted to pay taxes from out of the seized shares and securities stating that the shares be expeditiously disposed of and the sale proceeds therefrom be appropriated towards taxes.

The said letter dated 15.12.1994 reads as under :

> "Please refer to your letter cited in reference above in the matter of payment of taxes. I had made declaration U/s. 132(4) of the Act and pursuant declaration opted to pay taxes from out of the assets namely shares and securities under seizure, as I have no further funds. I have therefore delivered my consent and requested the Asst. Director of Income Tax (Inv.) Unit-2 (3), to dispose of the shares as expeditiously as possible for appropriating the proceeds towards taxes and advance tax. In the above circumstances I request you sir to arrange for sale of Shares, Securities under seizure to meet the tax liabilities and oblige."

Indisputably, the said request of the appellant was not acceded to. However, the fact that such an offer had been made by the appellant is not denied or disputed. It is furthermore not disputed that the Income Tax Department demanded and recovered a sum of Rs.40 lakhs in between the period January and March 1995, the details whereof are as under:

"Assessment Year	Date of Payment	Amount (Rs.)
1993-94	17.01.1995	7,50,000/-
1994-95	17.01.1995	7,50,000/-
1992-93	18.01.1995	50,000/-
1991-92	20.03.1995	10,00,000/-
1991-92	24.03.1995	10,00,000/-
	Total	40,00,000/-"

Indisputably, the appellant filed an application in terms of sub-Section (1) of Section 245C before the Settlement Commission on 2.1.1996 whereupon an order was passed by the Settlement Commission on 2.12.1999.

The demand draft drawn in the name of PAN Clothing Company Limited worth Rs. 10 lakhs which was seized during the course of search was encashed by the Income Tax Department in July 2000 after the same was got revalidated.

By an order dated 8.3.2002, the Income Tax Officer, Ward – 10(1), Hyderabad levied interest for a sum of Rs. 31,41,106/- under Section 220 (2) of the Act for the assessment years 1990-91 to 1995-96.

Appellant thereafter filed an application for waiver of interest on diverse dates i.e. 3.4.2002, 14.5.2002 and 16.9.2002. The same was rejected by the Commissioner of Income Tax reason of an order dated 26.11.2002 opining that the appellant did not satisfy all the three conditions which were required for allowing a waiver petition. It was, however, accepted that the appellant cooperated with the Department. So far as the request of the appellant to sell the shares and securities is concerned, it was opined that the levy of interest did not cause any genuine hardship to him and the default in payment of the amount of tax on which interest has been paid or was payable under Section 220(2A) was due to circumstances beyond his control. It was furthermore opined that the dues as against the appellant could be crystallized only after passing of the order of the Settlement Commission 2.12.1999.

The Commissioner held:

> "Further, as per the enquiry report dated 22.11.2002, obtained from the Income Tax Officer Ward-10 (1), indicates that Sri B.M.Malani has been residing in a house bearing No. 1-11-219, Begumpet, Hyderabad. The property is located in posh area near Airport in Begumpet. The area of the property is about 6000 sq. yds., and value will be around Rs. 2 crores. Thus, property as referred above belongs to HUF and the assessments under consideration were passed in the status of HUF. From the details gathered by the Department, it was revealed that the assessee possesses good resources and he is financially sound and it will

> not cause any hardship in discharging legitimate tax liability which is in the form of interest u/s 220 (2A) and the tax liability that would have arisen out of his inordinate delay in liquidation of taxes."

By reason of the impugned judgment, the High Court opined:

> "The hardship claimed by the petitioner is on account of lack of resources either moveable or immoveable. Even after the conclusion of this Court that the finding of the 1st respondent regarding the property at Begumpet is justified, the fact remains that the petitioner had assets by way of units in the Unit Trust of India by the date of the Settlement Commission determined his liability of tax. The fact that a distress sale conducted by the Unit Trust fetched a lower rate in our view does not make any difference for the consideration of the application of the petitioner for the waiver of interest. The UTI did not follow according to the Division Bench of this Court the requisite procedure in resorting to distress sale. That is a different matter. But, nothing prevented the petitioner from encashing the said units and pay the tax liability in time. The submission of the learned counsel for the petitioner that such a premature sale of the units would result in a financial loss to the petitioner is irrelevant in the context of the application for waiver of interest. If the petitioner is already found liable and due to pay tax under the Income Tax Act, the petitioner cannot choose the time for encashing the assets he had to get the post price for the asset and still complain that the levy of interest would cause undue hardship to him. Apart from that by virtue of the Division Bench judgment of this Court, the UTI is already directed to make good the loss suffered by the petitioner by virtue of the distress sale undertaken by the UTI."

Applicability of the second condition specified in Section 220(2A) of the Act was not gone into on the premise that the appellant had not been able to establish that payment of interest would cause any genuine hardship to him.

4. Before adverting to the contentions raised by the parties, however, we may notice that the Settlement Commission did not accept the incomes declared by the appellant in his returns filed on 1.1.1996 under Section 148 of the Act and enhanced the amount of taxable income. It also estimated the income for earlier Assessment Year 1989-90 in terms of Section 245-E of the Act, although, his application did not cover that Assessment Year, the details whereof are as under:

"Assessment Year	Income admitted by petitioner (in Rs.)	Income determined by Settlement Commission (in Rs.)
1988-89	8,090	26,21,090
1990-91	10,75,310	33,51,574
1991-92	28,67,040	29,92,880
1992-93	13,62,100	56,35,038
1993-94	64,505	11,27,964
1994-95	56,880	1,52,880
1995-96	52,880	9,27,880
Total	54,82,805	1,68,09,306"

The amount of tax quantified by the Assessing Officer in terms of the order of the Settlement Commission for different Assessment Years were as under:

"Assessment Year	Tax demand payable (in Rs.)
1988-89	13,54,284
1990-91	37,29,992
1991-92	33,68,567
1992-93	61,39,448
1993-94	7,21,192
1994-95	65,145
1995-96	3,99,023
Total	1,57,77,651"

Demand notices were issued accordingly. Taxes were payable in terms thereof on or before 1.4.2000. All amounts paid by the appellant before the said date were adjusted. The appellant had deposited a total amount of Rs.1,60,66,947/- on or before 8.3.2002. The amount of interest calculated at a sum of Rs.31,41,106/- was levied for non-payment of the dues as on 8.3.2002 for Assessment Years 1990-91, 1991-92, 1992-93 and 1995-96. The amount so determined, however, stood rectified for the four Assessment Years to the extent of Rs.24,36,352/- in stead and place of Rs.31,41,106/- as would appear from the following chart.

"Assessment Year	Tax demand payable (Rs.)	Levied Int. U/s. 220 (2) (Rs.)	Demand paid/ recovered till 8.3.2000 (Rs.)
1988-89	13,54,284	NIL	13,54,284
1990-91	37,29,992	1,91,996	37,27,992
1991-92	33,68,546	4,58,463	33,68,546
1992-93	61,39,448	16,53,560	64,30,765
1993-94	7,21,192	NIL	7,21,192
1994-95	65,145	NIL	65,192
1995-96	3,99,023	1,32,333	3,99,023
Total	1,57,77,630	24,36,352	1,60,66,947"

5. Section 220(2A) of the Act contains a non-obstante clause. It confers a jurisdiction upon the Chief Commissioner or Commissioner to reduce or waive the amount of interest paid or payable by an assessee thereunder, 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 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) Assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

6. The submission of Mr. Verma is that non encashment of demand draft worth Rs. 10 lakhs as also non-selling of the shares and securities as prayed for by the appellant caused genuine hardship to the assessee, in support whereof reliance has been placed on the New Collins Concise English Dictionary, Words and Phrases Permanent Edition Vol. 18 and Black's Law Dictionary.

It was furthermore submitted that had the shares and securities been sold when the request therefor was made, which was worth Rs. 30 lakhs at the relevant time, the tax burden of the appellant would have been reduced; particularly when after adjusting the amount of Rs.117.04 lakhs deposited by the appellant, only a sum of Rs. 40.73 lakhs remained due.

7. Ms. Rajni Ohri Lal, learned counsel appearing on behalf of the respondents, however, drew our attention to the nature of the business, the appellant had been carrying on and the magnitude thereof to contend that the appellant did not suffer any genuine hardship.

8. The term 'genuine' as per the New Collins Concise English Dictionary is defined as under:

> 'Genuine' means not fake or counterfeit, real, not pretending (not bogus or merely a ruse)"

For interpretation of the aforementioned provision, the principle of purposive construction should be resorted to. Levy of interest although is statutory in nature, inter alia for re-compensating the revenue from loss suffered by non-deposit of tax by the assessee within the time specified therefor. The said principle should also be applied for the purpose of determining as to whether any hardship had been caused or not. A genuine hardship would, inter alia, mean a genuine difficulty. That per se would not lead to a conclusion that a person having large assets would never be in difficulty as he can sell those assets and pay the amount of interest levied.

The ingredients of genuine hardship must be determined keeping in view the dictionary meaning thereof and the legal conspectus attending thereto. For the said purpose, another well—known principle, namely, a person cannot take advantage of his own wrong, may also have to be borne in mind. The said principle, it is conceded, has not been applied by the courts below in this case, but we may take note of a few precedents operating in the field to highlight the aforementioned proposition of law. [See Priyanka Overseas Pvt. Ltd. & Anr. v. Union of India & ors. 1991 Suppl. (1) SCC 102, para 39, Union of India & ors. v. Major General Madan Lal Yadav (Retd.) (1996) 4 SCC 127 at 142, paras 28 and 29, Ashok Kapil v. Sana Ullah (dead) & ors. (1996) 6 SCC 342 at 345, para 7, Sushil Kumar v. Rakesh Kumar (2003) 8 SCC 673 at 692, para 65, first

sentence, Kusheshwar Prasad Singh v. State of Bihar & ors. (2007) 11 scc 447, paras 13, 14 and 16).

Thus, the said principle, in our opinion, should be applied even in a case of this nature. A statutory authority despite receipt of such a request could have kept mum. It should have taken some action. It should have responded to the prayer of the appellant.

However, another principle should also be borne in mind, namely, that a statutory authority must act within the four corners of the statute. Indisputably, the Commissioner has the discretion not to accede to the request of the assessee, but that discretion must be judiciously exercised. He has to arrive at a satisfaction that the three conditions laid down therein have been fulfilled before passing an order waiving interest.

Compulsion to pay any unjust dues per se would cause hardship. But a question, however, would further arise as to whether the default in payment of the amount was due to circumstances beyond the control of the assessee.

Unfortunately, this aspect of the matter has not been considered by the learned Commissioner and the High Court in its proper perspective. The Department had taken the plea that unless the amount of tax due was ascertainable, the securities could not have been sold and the demand draft could not have been encashed. The same logic would apply to the

case of the assessee in regard to levy of interest also. It is one thing to say that the levy of interest on the ground of non-payment of correct amount of tax by itself can be a ground for non-acceding to the request of the assessee as the levy is a statutory one but it is another thing to say that the said factor shall not be taken into consideration at all for the purpose of exercise of the discretionary jurisdiction on the part of the Commissioner. Appellant volunteered that the securities be sold. Why the said request of the appellant could not be acceded to has not been explained. It was a voluntary act on the part of the appellant.

It was not even a case where sub-Section (3) of Section 226 of the Act was resorted to. As the offer was voluntary, the authorities of the Department subject to any statutory interdict could have considered the request of the appellant. It was probably in the interest of the revenue itself to realize its dues. Whether this could be done in law or not has not been gone into.

9. The same ground, however, was not available to the appellant in respect of the demand draft, as in relation thereto no such request was made. The demand draft was in the name of a Company. It may be true that when any document is seized, a presumption is raised that the same belongs to the person from whose possession or control it was seized as is laid down in sub-Section (4A) of Section 132 of the Act, but such a

presumption is a rebuttable one. In the absence of any request made by the Assessee himself, probably at that point of time, the same could not have been encashed. Appellant did not own the same in law. He did not make any request for its enchashment.

Whether such a presumption should be raised or not was the subject matter of consideration by the Assessing Officer at the time of making its final assessment as the appellant himself filed an application before the Settlement Commission in terms of Section 245C(1) of the Act.

10. We are, therefore, of the opinion that interests of justice would be subserved if the impugned judgment is set aside and the matter is remitted to the Commissioner of Income Tax for consideration of the matter afresh.

11. The appeal is allowed accordingly to the aforementioned extent. No costs.

……..…….J.
[S.B. Sinha]

..……..…….J.
[Cyriac Joseph]

New Delhi;
October 01, 2008