IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No. 24563 of 2014(O&M)

Date of Decision: 31.03.2016

Industrial Cables (India) Limited, Industrial Area, Rajpura (Punjab)

... Petitioner.

vs.

Central Board of Direct Taxes, Department of Revenue, New Delhi and ors.

... Respondents

CORAM:HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present:- Mr. Pankaj Jain, Sr. Advocate with
Mr. Sachin Bhardwaj, Advocate
for the petitioner.

Mr. Zora Singh Klar, Advocate
for the respondents.

RAJESH BINDAL,J

The petitioner has filed this petition challenging communication dated 25.08.2014 (Annexure P-9) from Directorate of Income Tax (Recovery) rejecting the prayer of the petitioner for grant of concession in terms of the Scheme dated 13.05.2004 sanctioned by the Board of Industrial and Financial Reconstruction (here-in-after called 'BIFR').

Learned counsel for the petitioner raised brief argument that the rejection of the claim of the petitioner is merely on the ground that the net worth of the petitioner company had become positive as on 31.03.2006 and the scheme sanctioned by BIFR vide its order dated 13.5.2004 had expired on 31.10.2006 hence, Income Tax reliefs cannot be processed. While referring to the judgment of Delhi High Court titled as ***Director General of Income Tax (Admn.) and Anr., New Delhi vs. Board of Industrial and Financial Reconstruction, New Delhi and ors., in WP(C) Nos. 1940, 1942, 1943, 1945, 1946, 1948-1958 of 2011*** decided on 23.03.2011 it is submitted that the issue was raised by the department by challenging various orders passed by BIFR, without taking recourse to remedy of appeal available under Section 25 of the Sick Industrial Companies (Special Provisions) Act, 1985 on the ground that where sick industrial company's net worth becomes positive, it would entitle the Department to withdraw the concessions which form part of a sanctioned scheme. The order passed even in the case of petitioner company was also challenged by the department. It was subject matter of WP(C) Nos. 1940 of 2011. The writ petition was dismissed on 23.03.2011 holding that the Department cannot resile from the concessions made at the stage when the scheme was formulated and sanctioned merely because the net worth of the company at a later stage had turned positive.

Special Leave to Appeal (Civil) filed by the department against the judgment dated 23.03.2011 passed by Delhi High Court was also dismissed by Hon'ble Supreme Court of India on 27.04.2012. Hence, the rejection of the claim of the petitioner only on the ground that the net worth of the petitioner company having turned positive, the concession as envisaged in the scheme cannot be granted, cannot be legally sustained and the matter deserves to be remitted back to the competent authority to be decided afresh.

On the other hand, learned counsel for the respondents raised issue regarding entitlement of benefits upto the date the scheme was applicable. He could not dispute the fact that the entitlement of the concessions granted to sick industrial company on its net worth becoming positive was decided against the department by Delhi High Court and the appeal of the department was dismissed by Hon'ble Supreme Court. It was held therein that the concession cannot be denied merely on the ground that the net worth of the company became positive after the scheme was sanctioned.

It is further submitted that still the department can consider whether the petitioner is entitled to the benefit under the provisions of Section 41(1) of the Income Tax, 1961.

After hearing learned counsel for the parties, we are of the considered view that the legal issue namely the entitlement of relief to industrial unit can not be rejected only on the ground that company has been discharged by BIFR from the purview of the Sick Industrial Companies (SICA) Act, 1985. The benefits as envisaged under the scheme cannot be denied by the Income Tax Department merely on the ground that the net worth of the petitioner company had become positive. The issue was gone into by Delhi High Court in ***Director General of Income Tax (Admn.)'s case (supra)*** alongwith bunch of writ petitions filed by the Income Tax Department impugning the order passed by BIFR and the same were dismissed. The operative paragraphs of the judgment are extracted below:-

"We are, thus, of the view that the Department cannot resile from the concessions made at this stage when the scheme was formulated and sanctioned merely because the net worth of the company at whose behest the scheme was sanctioned has become positive. That part of the sanctioned scheme which remains to be implemented will have to be implemented. A contrary view would result in disastrous consequences. Creditors, employees, shareholders, amongst other dramatis personae will pull in different directions, thus defeating the very purpose for which the sanctioned scheme was formulated in the first instance.

17. Needless to say that if there is a grievance of the Department in respect of any particular case, in as much that the concerned company is not implementing the provisions of the sanctioned scheme, it will be open to the Department to take action, in accordance with law, for enforcement of the sanctioned scheme.

18. In view of the discussion above there is, thus, no ground made out to exercise jurisdiction under Article 226 of the Constitution of India, since the department seems to be aggrieved by only that part of the impugned orders which tend to bind the department to the sanctioned scheme even after the BIFR has discharged the reference. As observed whether or not the BIFR implements the sanctioned scheme, it continues to bind the Department."

Special Leave to Appeal (Civil) filed by the department against the judgment dated 23.03.2011 passed by Delhi High Court was also dismissed by Hon'ble Supreme Court of India on 27.04.2012.

A perusal of the impugned communication dated 25.08.2014 shows that the rejection of the claim of the petitioner is merely on the ground that the net worth of the petitioner company had become positive. The operative period of the scheme had expired on 31.10.2006. The issue has not been considered in the light of the observations made in the scheme formulated by the BIFR. Hence, the impugned communication deserves to be set aside.

The writ petition is accordingly allowed.

The impugned communication is set aside and the matter is remitted back to the competent authority to be decided afresh in the light of the observations made by Delhi High Court in the aforesaid judgment and the provisions of law.

(**RAJESH BINDAL)**
JUDGE

31.03.2016 **(HARINDER SINGH SIDHU)**
dinesh **JUDGE**

(Refer to Reporter)