

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 4217 of 2016 (O&M)

Date of Decision : 20.03.2018

The Chairman Central Board of Taxes and others

....Petitioners

Versus

Central Administrative Tribunal, Chandigarh and another

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJBIR SEHRAWAT

.....

Present: Mr. P.C.Goyal, Advocate
for the petitioners.

Mr. Puneet Bali, Sr. Advocate with
Mr. Vibhav Jain, Advocate and

Mr. Arun Gupta, Advocate and
Mr.Rajeev Kawatra, Advocate
for respondent No.2.

....

MAHESH GROVER, J. (Oral)

CM-4219 & 4220-CWP-2018

Allowed as prayed for.

CWP No. 4217 of 2016

The petitioners impugn the order dated 29.10.2015 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh.

Respondent No.2-Manjit Singh joined the Indian Revenue Service (Income Tax) in the year 1992 and gradually with the passage of time gained access to subsequent promotion. In the year 1997 he was promoted as Deputy Commissioner of Income Tax (DCIT) in Central Circle, Mumbai. While performing his functions he sensed a huge tax evasion by some of the companies having linkage to the infamous Harshad Mehta Group and thereupon framed the assessment which was

subsequently treated as suspicious because of its inflated character. The respondent No.2 was served with a charge-sheet alleging irregularities in the assessment made by him between November 1997 to March 1998. The respondent No.2 denied the charges and a regular inquiry was initiated.

The Inquiry Officer went into the allegations and upon consideration of the relevant material concluded as below :-

“4. IO's findings

In brief the allegations relates with gross negligence in handling assessment in respect of 5 assessee companies resulting in substantial under assessment of income and short levy of interest and thereby conferment of undue benefit to various assessees. The first set of allegations is on computing profit on sale in which the CO allegedly committed mistake in subtracting cost price of total number of shares. Second allegations are on under charging interest u/s 234A & B in respect of three assessments. Another allegation is failure of disallowance of interest. All these cases belonged to infamous Harshad Mehta Group.

4.1 The allegations are in two groups, in the first group there is calculation error while calculating the profit in concluding part of assessment even though discussion in main body of the assessment order was found correct. In these cases the CO instead of deducting cost of number of shares sold, have deducted cost of total number of share as owned by the assessee. In the 2nd group there was mistakes resulting in under charge of interest u/s 234(A)/(B) of IT Act. Here the interest period was to be considered upto date of assessment. In another

case there was error in disallowing assessee claim of interest payable, while computing the total income of the assessee disallowance was ignored. It has been observed that in most of the cases the income/interest got under assessed, but in one of the case (M/s Pallavi Holding) the income indicated in the calculation sheet was shown excess than what was calculated in the assessment order.

5. The Inquiry Authority has examined the case and has considered the following issues.

(i) These were mainly cases of calculation/arithmetical error apparent on record, therefore, rectification was possible u/s 154. It appears that the income might have got underassessed by way of calculation mistake in the concluding paragraphs of the assessment orders, as the analysis by the CO in the body of the assessment order was found apparently correct.

(ii) The concerned CIT/controlling authority has certified these mistakes as “Bonafide error”. There is nothing on record to show that these mistakes have any element of ulterior motive, malafide or favouritism.

(iii) The Inquiry Authority after thorough enquiry, have held that “considering the entire charge sheet as integral document and the case in totality, the article of charge is not sustainable yet the mistake or errors as alleged are directly corroborated from evidence on record...., it is for the disciplinary authority to take appropriate view in the matter. Since these errors being bonafide arithmetical mistakes as also

certified by the department, I, therefore, hold the article of charge as NOT PROVED.”

The Legal Cell of the department also went into it and concluded as below :-

“6. DA's views on the IO report

On inspection of the charge sheet, the documents in support of the article of charge, and the Inquiry Report, it is apparent that the imputation of misconduct that the officer displayed gross negligence in handling the scrutiny assessments which resulted in substantial under assessment of income and short levy of interest may be held as 'proved'. However, it is also apparent from the perusal of the record that the mistakes are basically calculation or arithmetical errors and these occurred in the concluding paragraphs of the assessment orders. The analysis in the body of the assesment order was apparently correct. Similarly, the under charge of interest u/s 234A/B of the I.T.Act, the period of interest is initially mentioned correctly but later on while computing the interest incorrect period got considered. This mistake too was later rectified u/s 154. Thus these mistakes may reflect some lapse in supervision but do not show any culpable negligence.

It appears that allegations of undue favour to the assessee by way of under assessment of income may not be sustainable considering the facts and circumstances of the case. The CO has made substantive additions and the assessed income is several crores of rupees in many cases which has stood the test of appeal. As no element of ulterior motive,

malafide or favouritism can be attributed to these irregularities [bonafide errors], the charge of conferment of undue benefit to the assesseees and thereby failing to maintain absolute integrity may be held as 'not proved'.

The article of charge may therefore be held as 'partly proved'.

7. After considering the entire aspect of the case it is apparent that the mistakes or errors were mainly arithmetical which were rectifiable u/s 154. No motives on the CO's part pecuniary or otherwise have been brought out by the department or can be attributed to the CO. The quantum of error is mainly attributable to the nature of charge held by the CO in which even a minor error can lead to difference in crores. However, there has been no revenue loss as the arithmetical mistakes were rectified u/s 154. As the entire case is of bona fide error on the part of the CO the case does not for levy of any penalty and at best only minor penalty may be considered against the CO. Keeping all these facts under consideration the CO's case may be considered for levy of minor penalty instead of major penalty.”

The matter was then referred to the CVC who considered the report of the Inquiry Officer in the opinion as extracted above but made a recommendation disagreeing with the aforesaid and recommending a suitable major penalty. For the purposes of reference we may also extract the brief recommendation of the CVC as under :

“In view of the above, the Commission would, in disagreement with the Disciplinary Authority and the

CVO/CBDT, advise imposition of a suitable major penalty against Shri Manjit Singh, JCIT.”

Nothing was done by respondent No.2 for number of years and finding that this material was obstructing his promotion, he filed proceedings (OA) before the Tribunal questioning the order of the CVC recommending initiation of major penalty proceedings. Along with this he also questioned the entire process of issuance of chargesheet etc.

Amongst other grounds that he took up one was that prior sanction of the competent authority had not been obtained before issuance of a chargesheet. The Tribunal then accepted the plea and set aside the chargesheet against the respondent No.2 whereafter the respondent No.2 discovered that ex-post facto sanction had indeed been granted but this fact had not been brought to the notice of the Tribunal. Eventually a review petition was filed pleading that ex-post facto sanction had been granted and thus the finding of the Tribunal in this regard was incorrect.

The Tribunal accepted the review petition vide order dated 17.7.2015 and recalled earlier order dated 5.3.2014. It restored the proceedings to its original stage and then proceeded to determine the issue afresh resulting in the impugned order dated 29.10.2015. The order was passed accepting the plea of respondent No.2 primarily on the following grounds :-

- i) The charges against respondent No.2 were unsustainable as the assessment orders alleging motives to him were passed in the exercise of his quasi-judicial functions and nevertheless they were arithmetical errors.
- ii) In the absence of sustainable allegations of ulterior motives in passing the assessment order the charges could not be sustained particularly when the Inquiry Officer also conclusively held no wrong doing.

iii) The order of the CVC could at best be termed to be advisory and not to be treated as binding which would give flexibility to the department to pass an order by applying its mind to arrive at a conclusion whether to proceed ahead with the charges or not.

The petitioners aggrieved of the impugned order dated 29.10.2015 have been unable to advance any meaningful argument that would persuade us to take a contrary view. The charges against the respondent No.2 upon perusal do not in any way suggest anything apart from an error in judgment which has also been established in the inquiry where it was attributed to a mathematical error capable of being corrected under Section 154 of the Income Tax Act.

Before us the respondent No.2 has raised an argument that being quasi-judicial orders they could be tested before appropriate forum and unless it was established that the orders passed reflected on the integrity of respondent No.2 or displayed recklessness or negligence that would indicate a conduct “unbecoming of a government servant”, there would be no occasion to draw an adverse inferences against him. Reliance was placed on various pronouncements of the Hon'ble Supreme Court including *Union of India and others v. K.K.Dhawan*, 1993 AIR 1478.

The other pronouncements of the Hon'ble Supreme Court to a similar effect do find mention in the order of the Tribunal and were also relied upon before us. We need not dilate further on these citations relied upon by the respondent No.2 reiterating the view in *K.K.Dhawan's case* (supra).

The petitioners have been unable to show anything that would bring the conduct of respondent No.2 within the ambit of the observations in *K.K.Dhawan's case* (supra). There have been no allegations of

impropriety, undue favour or charges of recklessness or negligence. Rather the Inquiry Officer has established the assessment orders to be errors in calculation and not having any foundation in financial improprieties or negligence. If that is so then there would be hardly any material against respondent No.2 to obstruct his career progression. The CVC has merely recommended action for major penalty without even formulating any reasons to do so and, therefore, such orders sans any reasoning cannot be construed to be a mandate and even if it be so it is the duty of the department to take a holistic view and evaluate if there is any material adverse to an incumbent to sustain disciplinary proceedings against him.

In service jurisprudence the legitimate expectation of an employee in career progression cannot be thwarted on reasons that are whimsical and do not offer any sustainable foundation.

Consequently, we are of the considered view that the respondent No.2 has been unjustly dealt with by the petitioners and finding no infirmity in the orders of the Tribunal, we are clearly of the view that issuance of a subsequent chargesheet termed as a fresh charge though they are merely a reiteration of the earlier one would be totally illegal and unsustainable more particularly when the petitioners have been unable to deny the assertion of respondent No.2 of his entire career being unblemished. We would thus unhesitatingly quash these proceedings while upholding the impugned orders of the Tribunal. As a direct consequence thereof, we direct that the case of the respondent No.2 for promotion and consequential financial benefits be dealt forthwith and if entitled to promotion, the same would relate back to the date when his juniors were promoted ignoring him for the same.

Petition dismissed.

(MAHESH GROVER)
JUDGE

20.03.2018
dss

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No