A KISHAN LAL

v.

UNION OF INDIA AND ANR

JANUARY 22, 1998

B [B.N. KIRPAL AND S.P. KURDUKAR, JJ.]

Income Tax Act, 1961 :

S. 220(2A)—Application for reducing the interest levied for default in
C *payment of tax within time—Decision on—Held, is subject to judicial review—It would be imperative that reasons are given by authority concerned while disposing of the application—Assessee's application restored to file of Chief Commissioner, Delhi for disposal in accordance with law.*

The Siemens Engineering and Manufacturing Co. of India Ltd. **v.** *Union*
D *of India & Anr.,* **[1976] 2 SCC 981, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1386 (NT) of 1987.

From the Judgment and Order dated 10.4.87 of the Delhi High Court in
E C.W.P. No. 994 of 1987.

H.N. Salve, Vineet Kumar, Bhaiyaji Gupta, Ms. Kiran Bhardhwaj, Ms. Nina Gupta and Ms. Arpita Roy Chodhury for the appellant.

B.B. Ahuja, G. Venkatesh Rao, C. Radha Krishna, B.K. Prasad and Ms.
F A. Subhashini for the Respondents.

The following Order of the Court was delivered :

Heard learned counsel for the parties. In the instant case interest was sought to be levied on the appellant under sec. 220(2) of the Income-Tax Act
G on account of default having been committed by the appellant in payment of Income Tax within time. In order to avoid this levy, the appellant filed an application under sub-section (2-A) of sec.220 before the Central Board of Direct Taxes, *inter-alia*, stating facts and reasons as to why the amount of interest which was payable should be reduced, if not waived altogether.
H Reasons for seeking a favourable order were contained in the application.

The appellant received a letter dated 29th January, 1987 whereby this application was rejected. The said letter reads as follows:- A

"Please refer to your petition dated nil and further petition dated 24.11.86 on the subject mentioned above. The matter has been examined by the Board. After considering the application filed by you and the report of CIT in the matter, the Board is of the view that the conditions as laid down in section 220(2A) are not satisfied in your case and hence regrets its inability to interfere in the matter." B

A writ petition under Art. 226 of the Constitution was then filed in the High Court of Delhi and it was contended that while rejecting the application the Central Board of Direct Taxes had given no reasons. The High Court observed, while dismissing the Writ Petition, that the order of the CBDT could not be said to be vitiated for this reason. C

When an application is filed under sub-section (2A) of Sec. 220 the authority concerned is called upon to take a quasi judicial decision. If it is satisfied that the reasons contained in the application would bring the case under Clauses (i) (ii) and (iii) of sec.220 (2A) then it has the power either to reduce or waive the amount of interest. Even though in the said sub-section it is not stated that any reasons are to be recorded in the order deciding such an application, it appears to us that it is implicit in the said provision that whenever such an application is filed the same should be decided by a speaking order. Principles of natural justice in this regard would be clearly applicable. It will be seen that a decision which is taken by the authority under sec.220 (2A) can be subjected to judicial review, as was sought to be done in the present case by filing a petition under Art. 226, this being so and where the decision of the application may have repercussion with regard to the amount of interest which an assessee is required to pay it would be imperative that some reasons are given by the authority while disposing of the application. Mr. Salve, the learned senior counsel for the appellant has strongly relied upon the observations of this Court in *The Siemens Engineering and Manufacturing Co. of India Ltd.* v. *Union of India & Anr.*, [1976] 2 SCC 981 where at page 986 it has been stated that where an authority makes an order in exercise of its quasi judicial function it must record its reasons in support of the order it makes. In other words, every quasi judicial order must be supported by reasons. In our opinion, the observations in that case would apply in the present case also. D E F G

We may here note the contention of Mr. Ahuja that in respect of the assessment year in question sec.220(2A) was not applicable as this sub- H

A section was inserted after the demand was raised. We express no opinion on this question because this will be one of the matters which the authority concerned may have to decide. With the amendment being made in sub-section (2A) an application to waive of interest has now to be decided by the Chief Commissioner or Commissioner, as the case may be. We, accordingly, allow this appeal, set aside the order of the High Court and of the Central B Board of Direct Taxes and restore the appellant's application under sec.220 (2A) to the file of Chief Commissioner, Delhi and direct that the same should be disposed of at an early date in accordance with law. There will be no order as to costs.

C R.P. Appeal allowed.