

## Waiver of interest could be denied on basis of CBDT's order without considering previously issue notification

**Summary – The High Court of Kerala in a recent case of Arun Sunny, (the Assessee) held that where assessee sought for waiver of interest under section 234B on basis of Notification F No. 400/234/95-IT(B), dated 23-5-1996, Chief Commissioner was empowered to decline said claim by applying subsequently issued Order-F. No. 400/234/95-IT(B)**

### Facts

- The assessee sold a property. The computation of capital gains on said transaction resulted in assessment order, leading to consequential levy of interest under section 234B. He applied before the Chief Commissioner for waiver of interest. He relied upon [Notification no. F. No. 400/234/95-IT\(B\), dated 23-5-1996](#).
- The Chief Commissioner declined waiver of interest by applying [order F. No. 400/234/95-IT\(B\), dated 30-1-1997](#) which was issued on same issue for relevant period. The assessee argued that said order is of no legal effect as it was only a communication, not amounting to an order under section 119(2)(a).
- The single Judge bench of the High Court upheld order of the Commissioner (Appeals).
- On appeal before division bench of the High Court:

### Held

- Document on which Chief Commissioner had relied upon, *i.e.*, Order F. No. 400/234/95-IT(B) is an order shown to have been issued by the Central Board of Direct Taxes ('CBDT') in exercise of the powers conferred under section 119(2)(a). It is wholly unacceptable to say that it is not an order under that provision but only a communication, unless, of course, reliable cogent material is produced by the assessee to denounce the credibility of exhibit. That document expresses the decision of the CBDT and contains directions to the Chief Commissioners and Directors General of Income-tax requiring compliance of the decision contained in that order. It is a statutory order. There is no way to escape from that legal position. Hence, the plea of the assessee is repealed that it is not exhibit that would apply.
- That order of CBDT was communicated to the concerned Chief Commissioner, is beyond any pale of doubt because what the assessee has produced as exhibit is nothing but the photostat copy of what would be available in the Office of the Chief Commissioner. It could only be inferred so since exhibit, at the top of its first page, contains the seal of that office.
- The assessee made a last, but extremely persuasive, submission that on the totality of the facts and circumstances of the case and weighing the claim of the assessee *vis-a-vis* the interest of the exchequer, an equitable decision may be rendered by this Court by tapering down the assessee's

liability; at least by ordering partial waiver of the interest component. Grant of waiver is a statutory matter. The Chief Commissioners cannot exercise that power except in accordance with directions which are issued by the CBDT. When the regulatory mechanisms in a fiscal legislation govern a situation; that cannot be visited in exercise of power under article 226 and appellate jurisdiction through an intra-court appeal since that would be in defeasance of the statutory impact of a fiscal legislation in the nature of the Income-tax Act, 1961. An 'equitable remedy' cannot be carved out in defeasance of; and eroding the statutory situation. No such plenary power rests with the High Court to criss-cross the impact of the relevant fiscal statutory provisions; more so since, in law, equity would be subservient to; and, cannot override; statute.

- For the foregoing reasons, there is no factual or legal infirmity in the impugned judgment warranting interference through this intra-court appeal.