Before Binod Kumar Roy, C.J., N.K. Sud and Surya Kant, JJ.

JASWANT SINGH BAMBHA,—*Petitioner*

versus

CENTRAL BOARD OF DIRECT TAXES AND OTHERS,—*Respondents*

C.W.P. No. 19040 of 2003

1st November, 2004

Income Tax Act, 1961—Ss. 29(2), 119(2)(b), 237 and 239—Limitation Act, 1963—S.5—Claim for refund of excess amount of tax after the period of limitation—Central Board rejecting the application for condonation of delay filed by the petitioner—Challenge thereto—Section 237 entitles a person to refund of excess amount of tax—Section 239 provides the manner of making application for refund and the period of limitation for claiming such a refund—S.239 confers no power to entertain a claim for refund made after the prescribed period of limitation—Whether the Board has power to admit a belated claim of refund—Held, yes—S.119(2)(b) deals with power to grant relaxation from the period of limitation to avoid genuine hardship in any case or class of cases—Sections 239 and 119(2) specifically include the application of Section 5 of 1963 Act to the claims of refund—Power of the Board u/s 119(2) to entertain a belated claim is only incorporation of the provisions of Section 5 of 1963 Act—Board held to be fully competent to admit an application for refund even after the expiry of period provided u/s 229.

(Niranjan Dass versus Central Board of Direct Taxes (2004) 266 ITR 489, over-ruled)

Held, that the provisions of Section 29(2) of the 1961 Act clearly show that Section 5 of the Limitation Act shall apply in cases of special or local laws to the extent to which they are not expressly excluded by such special or local laws. In other words, Section 5 of the Limitation Act cannot be resorted to only when it is expressly excluded by a special or local law. Section 239 of the Act has not expressly excluded the application of Section 5 of the Limitation Act. In fact, a conjoint reading of Section 239 and 119(2) of the 1961 Act clearly shows that the application of Section 5 of the Limitation Act

to the claims of refund has been specifically included in the 1961 Act. Thus, the power given to the Board under section 119(2) of the 1961 Act to entertain a belated claim is nothing but incorporation of the provisions of Section 5 of the Limitation Act, 1963.

(Paras 13.1, 13.2 & 13.3)

Further held, that by virtue of power conferred on the Board under section 119(2) of the 1961 Act, it is fully competent to admit an application for refund even after the expiry of period prescribed under section 239 of the Act for avoiding genuine hardship in any case or class of cases.

(Para 14)

P.C. Jain, Advocate, *for the petitioner.*

Rajesh Bindal, Advocate, *for the respondents.*

JUDGMENT

N.K. Sud, J.

(1) The petitioner in this writ petition had filed a refund claim for Assessment Year 1995-96 under Section 237 of the Income Tax Act, 1961 (for short "the Act"). Since the claim was made after the period of limitation prescribed in Section 239 of the Act, he moved an application for condonation of delay under Section 119(2)(b) of the Act which has been rejected by the Central Board of Direct Taxes (for short "the Board") without assigning any reasons ,--*vide* order dated 25th May, 2003 (Annexure P-1). The petitioner impugns this order.

(2) When the matter came up for motion hearing before a Division Bench of which one of us (N.K. Sud, J) was a member, a decision of another Division Bench of this Court in **Niranjan Dass** *versus* **Central Board of Direct Taxes, (1)** was relied upon to contend that the mandatory provisions of Section 239 of the Act were not amenable to relaxation by the Board through instructions under Section 119 of the Act. Interestingly, learned counsel for the assessee as well as the Revenue contended that Section 119(2)(b) of the Act specifically conferred such powers on the Board which had not been specifically noticed in **Niranjan Dass** *(supra).* Learned counsel for

(1) 2004 266 I.T.R. 489

the Revenue also pointed out that even the Revenue had not accepted the judgment of this Court in **Niranjan Dass** *(supra)* and had filed a Special Leave Petition before the Supreme Court.

(3) The Division Bench also entertained its doubt about the correctness of the view expressed in **Niranjan Dass** *(supra)* and referred the following question of law for consideration by a Full Bench :—

> Whether the conditions prescribed in Section 239 of the Income Tax Act, 1961 are amenable to relaxation at the hands of Central Board of Direct Taxes through instructions under Section 119 of the Act ?

(4) Mr. P.C. Jain, learned counsel for the assessee, contended as under :—

> Article 245 of the Constitution of India permits the Legislature to delegate various powers to the administrative agencies. The Legislature only declares the main law and its ploicy and it is not possible for it to apprehend and visualise each and every circumstance arising for the public so as to pronounce law for every situation. The powers are, thus, given to the administrative authorities to supplement the main law and not to supplant the main provision of law. The power conferred upon the Board under Section 119(2)(b) of the Act to direct admission of an application for refund after the expiry of period of limitation specified in Section 239 of the Act does not violate or override the main provisions of law. It is in conformity with Articles 265 and 300A of the Constitution of India which enshrine the principles of collection of tax viz. "that no tax shall be levied or collected except by authority of law" and "that no person shall be deprived of his property save by the authority of law". These Articles are based on the doctrine of unjust enrichment which provides that any tax collected without any entitlement or legality, must be refunded to the citizen. Section 237 of the Act embodies these principles and mandates that in case a person has paid tax more than the amount properly chargeable from him, he shall be entitled to refund of the excess. However, the machinery for claiming refund has been provided in Section 239 of the Act which also prescribes the period of limitation within

which the claim for refund can be made. The time limit so prescribed is, however, subject to relaxation by the Board in terms of Section 119(2)(b) of the Act, which is pari materia with the provisions of Section 5 of the Limitation Act and empowers the Board to admit a belated claim of refund under certain circumstances.

(5) Mr. Rajesh Bindal, learned counsel for the Revenue, contended as follows :—

Section 119(2)(b) of the Act specifically provides that the Board may, if it considers desirable or expedient, so to do, for avoiding genuine hardship in any case or class of cases, authorise the authority to admit an application for refund after the expiry of specified period. The powers have been delegated to the Board under Section 119 of the Act with a view to tone down the rigour of the law and ensure fair enforcement of the provision. This power is exercisable for the benefit of the assessee. He placed reliance on the desisions of the Apex Court in **Union of India and another** *versus* **Azadi Bachao Andolan and another, (2) and UCO Bank versus Commissioner of Income Tax. (3).** He also placed reliance on the decision of the Karnatka High Court in **Associated Electro Ceramics** *versus* **Chaiman, Central Board of Direct Taxes and another, (4)** wherein the contention of the Revenue that if no power had been granted to an Income Tax Officer or any other officer to condone the delay in making a claim, the Board also cannot extend the time, was rejected in view of the provisions of Section 119(2)(b) of the Act. He also placed reliance on the following case laws wherein the claim of the assessees for condonation of delay in making the claim of refund under Section 119(2)(b) of the Act was considered and not rejected on the ground that no power existed with the Board for condonation of delay :—

(i) **Gujarat Electro Company** *versus* **Commissioner of Income Tax, (5).**

(2) (2003) 263 I.T.R. 706
(3) (1999) 237 I.T.R. 889
(4) (1993) 201 I.T.R. 501
(5) (2002) 172 C.T.R. 220 (Gujarat)

(ii) **Dharampal Singh Pall** *versus* **Central Board of Direct Taxes and others, (6).**

(iii) **Kusumben M. Parikh** *versus* **Central Board of Direct Taxes and another, (7).**

(iv) **Mysure Sales International Limited** *versus* **Member Central Board of Direct Taxes and another, (8) and**

(v) **Sant Lal versus Union of India and others, (9).**

(6) Section 237 of the Act reads as under :—

"237. If any person satisfies the Assessing Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess."

(7) Section 239 of the Act reads as under :—

"239. (1) Every claim for refund under this Chapter shall be made in the prescribed from and verified in the prescribed manner.

(2) No such claim shall be allowed, unless it is made within the period specified hereunder, namely :—

(a) Where the claim is in respect of income which is assessable for any assessment year commencing on or before the 1st day of April, 1967, four years from the last day of such assessment year;

(b) Where the claim is in respect of income which is assessable for the assessment year commending on the first day of April, 1968, three years from the last day of the assessment year;

(c) where the claim is in respect of income which is assessable for any other assessment year, one year from the last day of such assessment year."

(6) (2001) 250 I.T.R. 629
(7) (2000) 242 I.T.R. 501 (Gujarat)
(8) (1998) 233 I.T.R. 663
(9) (1996) 222 I.T.R. 375

(8) Section 237 of the Act shows that the claim for refund has to be made before the Assessing Officer and the person claiming the refund has to satisfy the Assessing Officer that the amount of tax paid by him is in excess of the amount which is properly chargeable from him. Sub-section (1) of Section 239 of the Act lays down the manner in which an application for refund has to be made. Sub-section (2) lays down the time limit within which the claim for refund can be made. In Section 239, no power has been conferred on the Assessing Officer to entertain a claim for refund after the period prescribed thereunder.

(9) The question, however before us is whether the Board has the power to admit a belated claim of refund or not. For this purpose, reference has to be made to Section 119 of the Act, which reads as under :—

"119. (1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:

Provided that no such orders, instructions or directions shall be issued:—

(a) So as to require any income tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the direction of the Commissioner (Appeals) in the exercise of this appellate functions.

(2) Without prejudice to the generality of the foregoing power,—

(a) the Board may, if it considers it nesessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions

of sections 139, 143, 144, 147, 148, 154, 155, 158 BFA, sub-section (1A) of section 201, sections 210, 211, 234A, 234B, 234C, 271 and 273 or otherwise), general or special orders in respect of any class of incomes or class of cases, setting forth directions or instruction (not being prejudicial to assessees as to guidelines, principles or procedures to be followed by other income-tax authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information;

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any income-tax authority, not being a Commissioner (Appeals) to admit an application or claim for any exemption, deducation, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law;

(c) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order for reasons to be specified therein, relax any requirement contained in any of the provisions of Chapter IV or Chapter VI-A, where the assessee has failed to comply with any requirement specified in such provision for claiming deduction thereunder, subject to the following conditions, namely :—

(i) the default in complying with such requirement was due to circumstances beyond the control of the assessee; and

(ii) the assessee has complied with such requirement before the completion of assessment in relation to the previous year in which such deduction is claimed :

Provided that the Central Government shall cause every order issued under this clause to be laid before each House of Parliament."

(10) In **Azadi Bachao Andolan** *(supra)*, the Apex Court has considered the scope of clause (a) of sub-section 119(2) of the Act which empowers the Board to relax the rigours of various provisions of the Act by issuing general or special orders if it considers necessary or expedient to do so for the purpose of proper and efficient management of the work of assessment. At page 727, the Supreme Court has held as under :—

"Section 119, strategically placed in Chapter XIII which deals with "income-tax authorities" is an enabling power of the Central Board of Direct Taxes, which is recognised as an authority under the Income-Tax Act under section 116(a). The Central Board of Direct Taxes under this section is empowered to issue such orders, instructions and directions to other income-tax authorities "as it may deem fit for proper administration of this Act". Such authorities and all other persons employed in the execution of this Act are bound to observe and follow such orders, instructions and directions of the Central Board of Direct Taxes. The proviso to sub-section (1) of section 119 recognises two exceptions to this power. The first, that the Central Board of Direct Taxes cannot require any income-tax authority to make a pearticular assessment or to dispose of a particular case in a particular manner. The second, is with regard to interference with the discretion of the Commissioner (Appeals) in exercise of this appellate functions. Sub-section (2) of section 119 provides for the exercise of power in certain special cases and enable the Central Board of Direct Taxes, if it considers it necessary or expedient so to do for the purpose of proper and efficient management of the work

of assessment and collection of revenue, to issue general or special orders in respect of any class of incomes or class of cases, setting forth directions or instructions as to the guidelines, principles or procedures to be followed by other income-tax authorities in the discharge of their work relating to assessment or initiating proceedings for imposition of penalties. The powers of the Central Board of Direct Taxes are wide enough to enable its to grant relaxation from the provisions of several sections enumerated in clause (a). Such orders may be published in the Official Gazette in the prescribed manner, if the Central Board of Direct Taxes is of the opinion that it is so necessary. The only bar on the exercise of power is that it is not prejudicial to the assessee. We are not concerned with the provisions in clauses (b) and (c) in the present appeals."

(10.1) The Court also referred to its earlier decisions in **K.P.Varghese** *versus* **Income Tax Officer, Ernakulam and another, (10) and Ellerman Lines Limited** *versus* **Commissioner of Income Tax, West Bengal I., (11)** to observe that the circulars and instructions issued by the Board in exercise of power under Section 119 were binding on the authorities administering the tax department even if they be found not in accordance with the correct interpretation of sub-section (2) and they debar or deviate from such construction. Reference was also made to its decision in **Collector of Central Excise** *versus* **Dhiren Chemical Industries (12).** The Supreme Court in that case was dealing with the interpretation of the phrase appropriate. However, after having given the interpretation, it observed that if the Central Board of Excise and Customs had issued circulars placing a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue. In other words, the circulars issued by the Board under its statutory power were held to be binding on the income tax authorities if it was based on an interpretation of a particular phrase or provision which was in conflict with the interpretation made even by the Apex Court. The Supreme

(10) (1981) 131 I.T.R. 597
(11) (1971) 82 I.T.R. 913
(12) (2002) 254 I.T.R. 554

Court also placed relience on the following observations (at page 896) made in **UCO Bank** *(supra)* :—

> "Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board thus has power, *inter alia,* to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 of the Income Tax Act which are binding on the authorities in the administration of the Act. Under section 119(2)(a), however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forgo the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interst. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorised as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities." (Emphasis supplied)

(10.2) The Suprme Court, ultimately, held that the only restriction on the power of the Board under Section 119 of the Act "is to prevent it from interfering during the course of assessment of any particular assessee or the discretion of the Commissioner of Income Tax (Appeals)".

(11) It is true that the afore-mentioned observations have been made in the context of clause (a) of Section 119(2) of the Act but we are of the view that the same shall apply in full force even to clause (b) of the said provision. Clause (a) deals with the power to grant relaxation from the provisions of several sections enumerated therein. Clause (b) deals with power to grant relaxation from the period of limitation to avoid genuine hardship in any case or class of

cases. In **Associated Electro Ceramics** *(supra)*, it was held that even though no power had been granted to an Income Tax Officer or any other officer to condone the delay in making the claim for refund, such power had specifically been conferred on the Board under Section 119 (2) (b) of the Act. The contention of the Revenue that the Board had no such power was rejected by S.Rajendra Babu, J. (as his Lordship then was) in the following terms :—

> "The contention of learned counsel for the Department that if no power had been granted to as Income-tax Officer or any other Officer to condone the delay in making such a claim, the Board also cannot extend time, will not be correct, because this provision expressly provided that, where any time limit has been fixed, such time can be extended or delay condoned by the Board."

(12) The power of the Board under Section 119(2)(b) to admit an application or claim or return filed after the period specified for avoiding genuine hardship caused in any case or class of cases has also been recognised in **John Shalex Paints (P) Limited** *versus* **Central Board of Direct Taxes and another, (13) H.S Anatharamaiah** *versus* **Central Board of Direct Taxes and others, (14) Pallavan Transport Consultancy Services Limited** *versus* **Union of India and others, (15) Mysore Sales International Limited.** *(supra)*, **Kusumben M. Parikh's case** *(supra)*, **and Dharampal Singh Pall's case** *(supra)*. By admitting a belated claim for refund, the Board neither interferes with the course of assessment of any particular assessee nor with the discretion of the Commissioner of Income Tax (Appeals) which, according to the Supreme Court in **Azadi Bachao Andolan** *(supra)*, is the only restriction on the powers of the Board under Section 119 of the Act.

(13) The matter can be looked from another angle as well. Section 5 of the Limitation Act, 1963, permits the admission of an application beyond the period of limitation if the application satisfies the Court that he had sufficient cause for not making the application

(13) (1993) 201 I.T.R. 523 (Kar.)
(14) (1993) 201 I.T.R. 526 (Kar.)
(15) (1998) 233 I.T.R. 745 (Mad.)

within such period. This provision has general application. However, a departure to this general rule is made in Section 29(2) of the said Act, which reads as under :—

> "(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.

(13.1) The above provision clearly shows that Section 5 of the Limitation Act shall apply in cases of special or local laws to the extent to which they are not expressly excluded by such special or local laws. In other words, Section 5 of the Limitation Act cannot be resorted to only when it is expressly excluded by a special or local law.

(13.2) Section 239 of the Act has not expressly excluded the application of Section 5 of the Limitation Act. In fact, a conjoint reading of Sections 239 and 119(2) of the Act clearly shows that the application of Section 5 of the Limitation Act to the claims of refund has been specifically included in the Act.

(13.3) Thus. in our view the power given to the Board under Section 119(2) of the Act to entertain a belated claim is nothing but incorporation of the provisions of Section 5 of the Limitation Act, 1963.

(14) In view of the above, we are satisfied that by virtue of power conferred on the Board under Section 119(2) of the Act, it is fully competent to admit an application for refund even after the expiry of period prescribed under Section 239 of the Act for avoiding genuine hardship in any case or class of cases.

(14.1) We are, therefore, not in a position to subscribe to the view expressed by the Division Bench in **Niranjan Dass** *(supra)*. In that case, the claim of the petitioner for relaxation of the period of

limitation under Section 119 of the Act has been rejected in the following terms :—

> "We have perused Section 119 of the Act, extracted in the writ petition. It is not possible for us to accept that the statutory provision incorporated under Section 239 of the Act, is amenable to relaxation at the hands of the Board through instructions under Section 119 of the Act.

(14.2) The above finding does not deal with the provisions of Section 119(2) of the Act specifically nor takes into account various judicial pronouncements discussed above.

(14.3) Accordingly, we overrule the ratio laid down in **Niranjan Dass** *(supra).*

(15) We answer the reference in affirmative.

(16) Let the case now be placed before the Division Bench.

R.N.R.

Before S.S. Nijjar and J.S. Narang, JJ.

JAGAT PREET KAUR CHADHA
AND OTHERS,—*Petitioners*

versus

PUNJAB UNIVERSITY AND ANOTHER,—*Respondents*

C.W.P. NO. 11140 OF 2004

25th September, 2004

Constitution of India, 1950— Arts. 14, 16 &226—Admission to the Bechelor of Engineering Courses on the basis of entrance test— Petitioners seeking admission against the seats reserved for sports category— Before counselling the University laying down a criteria of obtaining minimum qualifying marks in the entrance test— Petitioners failing to secure the minimum qualifying marks— Exclusion from the list- Chanllenge thereto—Original prospectus of the University not containing the criteria of obtaining minimum qualifying marks— Whether the University can introduce the criteria of a minimum