BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 02.04.2019

Date of Decision : 12.04.2019

Appeal No. 451 of 2018

PVP Global Ventures Private Limited
Plot No. 83 & 84, Punnaiah Plaza,
Road No. 2, Banjara Hills,
Hyderabad – 500 033. ….. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. … Respondent

Mr. P.R. Ramesh, Advocate for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Ms. Vidhi Jhawar, Advocate i/b The Law Point for the Respondent.

WITH
Appeal No. 450 of 2018

PVP Ventures Limited
KRM Center, 9th Floor,
No. 2, Harrington Road,
Chetpet, Chennai – 600031. ….. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. …. Respondent

Mr. P.R. Ramesh, Advocate for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Ms. Vidhi Jhawar, Advocate i/b The Law Point for the Respondent.

WITH
Appeal No. 452 of 2018

Prasad V. Potluri
KRM Center, 9th Floor,
No. 2, Harrington Road,
Chetpet, Chennai – 600031. ….. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. …. Respondent

Mr. P.R. Ramesh, Advocate for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Ms. Vidhi Jhawar, Advocate i/b The Law Point for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M.T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. This batch of appeals involves a common issue and, therefore, the same are being decided together. For facility, the facts stated in Appeal No. 451 of 2018, PVP Global Ventures Private Limited vs. Securities and Exchange Board of India ('SEBI' for short) are being taken into consideration.

2. The appellant is a private limited company and is engaged in the business of investment and real estate. Pursuant to a report received from National Stock Exchange of India Limited ('NSE' for short) an investigation was conducted by SEBI on its parent company PVP Ventures Ltd., a listed company and appellant in Appeal No. 450 of 2018, for the period September 01, 2009 to October 30, 2009. Pursuant to the said investigation, it was found that the appellant had violated Section 12A(d) and (e) of the Securities and Exchange Board of India Act, 1992 ('SEBI Act' for short) and Regulation 3(i) and (ii) read with Regulation 4 of SEBI (Prohibition of Insider Trading) Regulations, 1992, pursuant to which the Adjudication Officer of SEBI after making necessary enquiry and, after providing an opportunity of hearing, passed an order dated March 27, 2015 imposing a penalty upon the appellant. The appellant being aggrieved filed an appeal before the Securities Appellate Tribunal which was disposed off. Thereafter the appellant filed a SLP before Supreme Court which was dismissed on September 14, 2018.

3. Thus, the penalty imposed by the Adjudicating Officer became payable. The Recovery Officer issued a certificate

dated October 26, 2018 under section 28A of the SEBI Act read with Section 222 of the Income Tax Act, 1961 certifying that a sum of Rs. 21,45,53,425/- was payable which amount included the penalty imposed by the Adjudicating Officer along with interest from March 27, 2015 to October 25, 2018 @ 12% p.a. Subsequently, a notice of attachment of bank account was issued by the Recovery Officer dated November 19, 2018. The appellant being aggrieved by this notice of attachment of bank account has filed the present appeal praying not only for quashing for the notice of attachment of bank account but also praying that direction be issued to the Recovery Officer to issue a fresh certificate after appropriate computation of interest.

4. We have heard Shri P.R. Ramesh, the learned counsel for the appellant and Shri Gaurav Joshi, the learned senior counsel along with Ms. Vidhi Jhawar for the respondent. The contention of the learned counsel for the appellant is, that the recovery certificate is wholly illegal in as much as a certificate cannot be issued straightway under Section 28A of the SEBI Act. It was urged that before issuing a certificate the Recovery Officer was required to issue a notice of demand under Section 220(1) of the Income Tax Act. It was also

urged in the alternative that calculation of interest was incorrect in as much as when the penalty imposed was reduced by this Tribunal, the interest was waived impliedly. It was also contended that the interest thus cannot be imposed with retrospective effect and interest, if any, could at best be payable from the date of the Supreme Court order. In support of his submission the learned counsel for the appellant has placed reliance upon a decision of the Supreme Court in ***Commissioner of Customs (Import), Mumbai vs. M/s. Dilip Kumar and Company & Ors. (Civil Appeal No. 3327 of 2007 dated July 30, 2018)*** in which it has been held that a taxing statute cannot be interpreted on any presumption or assumption and that the taxing statute has to be interpreted strictly.

5. On the other hand, the learned senior counsel for the respondent Shri Gaurav Joshi contended that the controversy raised in the present appeal is squarely covered by a decision of this Tribunal in ***Mr. Dushyant N. Dalal & Anr. vs. SEBI decided on March 10, 2017 (Appeal No. 41 of 2014)*** which judgment was affirmed by the Supreme Court reported in ***2017 SCC OnLine SC 1188***. The learned senior counsel

contended that in the light of the aforesaid decision all the appeals are devoid of any merit and liable to be dismissed.

6. Before dealing with the rival contentions it would be appropriate to quote section 28A of SEBI Act (to the extent relevant) and Section 220 of the Income Tax Act, 1961, which read thus:-

Section 28A of SEBI Act, 1992 w. r. e. f. 18/07/2013

"Recovery of amounts.

28A. *(1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—*

(a) attachment and sale of the person's movable property;

(b) attachment of the person's bank accounts;

(c) attachment and sale of the person's immovable property;

(d) arrest of the person and his detention in prison;

(e) appointing a receiver for the management of the person's movable and immovable properties,

and for this purpose, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

Explanation 1.-…………

Explanation 2.— Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

Explanation 3.— Any reference to appeal in Chapter XVIID and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before

the Securities Appellate Tribunal under section 15T of this Act.

(2) ……….

(3) ……….

(4) For the purposes of sub-sections (1), (2) and (3), the expression "Recovery Officer "means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.]"

Section 220 of Income Tax Act, 1961

"When tax payable and when assessee deemed in default.

***220.** (1) Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under section 156 shall be paid within thirty days of the service of the notice at the place and to the person mentioned in the notice :*

***Provided** that, where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty days aforesaid is allowed, he may, with the previous approval of the Joint Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a*

period less than the period of thirty days aforesaid, as may be specified by him in the notice of demand.

(2) If the amount specified in any notice of demand under section 156 is not paid within the period limited under sub-section (1), the assessee shall be liable to pay simple interest at one per cent for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (1) and ending with the day on which the amount is paid :

***Provided** that, where as a result of an order under section 154, or section 155, or section 250, or section 254, or section 260, or section 262, or section 264 or an order of the Settlement Commission under subsection (4) of section 245D, the amount on which interest was payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded :*

***Provided further** that in respect of any period commencing on or before the 31st day of March, 1989 and ending after that date, such interest shall, in respect of so much of such period as falls after that date, be calculated at the rate of one and one-half per cent for every month or part of a month.*

(2A) Notwithstanding anything contained in sub-section (2), the Chief Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by an assessee under the said sub-section If he is satisfied that-

(i) payment of such amount has caused or would cause genuine hardship to the assessee;

(ii) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee; and

(iii) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him].

(2B) Notwithstanding anything contained in subsection (2), where interest is charged under subsection (1A) of section 201 on the amount of tax specified in the intimation issued under sub-section (1) of section 200A for any period, then, no interest shall be charged under sub-section (2) on the same amount for the same period.

(3) Without prejudice to the provisions contained in subsection (2), on an application made by the assessee before the expiry of the due date under sub-section (1), the Assessing Officer may extend the time for payment or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.

(4) If the amount is not paid within the time limited under sub-section (1) or extended under sub-section (3), as the case may be, at the place and to the person mentioned in the said notice the assessee shall be deemed to be in default.

(5) If, in a case where payment by instalments is allowed under sub-section (3), the assessee commits defaults in paying any one of the instalments within the time fixed under that sub-section, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default.

(6) Where an assessee has presented an appeal under section 246 or section 246A the Assessing Officer may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat

the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

(7) Where an assessee has been assessed in respect of income arising outside India in a country the laws of which prohibit or restrict the remittance of money to India, the Assessing Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which, by reason of such prohibition or restriction, cannot be brought into India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation.—For the purposes of this section, income shall be deemed to have been brought into India if it has been utilised or could have been utilised for the purposes of any expenditure actually incurred by the assessee outside India or if the income, whether capitalised or not, has been brought into India in any form."

7. The object and intention of inserting Section 28A to the SEBI Act was to provide a mechanism for recovery of the amount due to SEBI. Instead of prescribing an independent mechanism for collection and recovery of the amounts due to

SEBI, the legislature deemed it fit to follow the mechanism provided under the Income Tax Act and accordingly inserted Section 28A to SEBI Act wherein the provisions of the Income Tax Act relating to collection and recovery have been incorporated. Thus, the legislature by inserting Section 28A to SEBI Act has provided that if a person fails to pay the amounts referred in Section 28A, then the Recovery Officer shall draw up a statement/certificate and proceed to recover the amounts specified in the certificate by any one or more of the five modes specified therein and for that purpose the provisions of Section 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 as in force from time to time, in so far as may be, would apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of SEBI Act and referred to the amount due to SEBI under the SEBI Act.

8. The Tribunal in Dushyant Dalal's case after considering the provision of Section 28A of SEBI Act read with Section 220 of the Income Tax Act held:-

> *"It is relevant to note that Section 220(1) of the Income Tax Act does not contemplate issuance of any notice of*

demand, but refers to the notice of demand served under Section 156 and mandates that the amount specified in the said notice of demand shall be paid within 30 days failing which interest @ 12% per annum would be payable under Section 220(2) on the amounts set out in the notice of demand from the end of the period mentioned under Section 220(1). Since Section 156 of the Income Tax Act is not incorporated in Section 28A of SEBI Act, the expression 'notice of demand' referred to in Section 220(1) for the purposes of recovery under the SEBI Act would be referable to the amounts demanded by SEBI under the disgorgement orders passed under Section 11B or under the penalty orders passed under Chapter VIA of the SEBI Act. Thus, on insertion of Section 28A with retrospective effect from 18.07.2013, the amounts demanded by SEBI which are enumerated in Section 28A, must be paid within 30 days, failing which the amounts demanded are liable to be recovered with interest @ 12% per annum.

Fact that Section 28A of SEBI Act does not specifically mention the interest liability for the delayed payment of the amounts specified therein cannot be a ground to hold that there is no substantive provision in the SEBI Act to demand interest on delayed payments. By incorporating Section 220 of the Income Tax Act in Section 28A of SEBI

> *Act, the legislature has statutorily imposed interest liability on the delayed payment of the amounts set out in Section 28A of the SEBI Act. In other words, the liability to pay interest under Section 28A read with Section 220 is automatic and arises by operation of law. Therefore, the argument of the appellants that there is no substantive provision in the SEBI Act to demand interest and hence, the RO, could not demand interest for the delayed payment cannot be accepted."*

9. The order of the Tribunal holding that no separate notice is required to be issued under Section 28A read with 220 of Income Tax Act was affirmed by the Supreme Court in the appeal filed by Dushyant N. Dalal.

10. We further find that the Adjudicating Officer in its order while imposing penalty had also directed the appellant to pay the penalty amount within 45 days. In our view this order of penalty would also be deemed to include a notice of demand and thus a formal requirement for issuance of a separate notice of demand pursuant to the order of penalty is no longer required. Thus, the contention raised by the appellant is not sustainable and is rejected.

11. The contention that interest was impliedly waived when the penalty was reduced by the Tribunal or that interest cannot be imposed with retrospective effect is patently misconceived. Hon'ble Supreme Court while affirming the judgment of this Tribunal in Dushyant Dalal's matter held as under:-

> *"We agree with the aforesaid statement of the law. It is clear, therefore, that the Interest Act of 1978 would enable Tribunals such as the SAT to award interest from the date on which the cause of action arose till the date of commencement of proceedings for recovery of such interest in equity. The present is a case where interest would be payable in equity for the reason that all penalties collected by SEBI would be credited to the Consolidated Fund under Section 15JA of the SEBI Act. There is no greater equity than such money being used for public purposes. Deprivation of the use of such money would, therefore, sound in equity. This being the case, it is clear that, despite the fact that Section 28A belongs to the realm of procedural law and would ordinarily be retrospective, when it seeks to levy interest, which belongs to the realm of substantive law, the Tribunal is correct in stating that such interest would be chargeable under Section 28A read with Section 220(2) of the Income Tax Act only prospectively. However, since it has not taken into account the Interest Act, 1978 at all, we set aside the Tribunal's findings that no interest could be charged from the date on which penalty became due. The Civil Appeals 10410-10412 of 2017 are allowed insofar as the penalty cases are concerned."*

12. From the aforesaid, it becomes clear that interest was not only chargeable under Section 28A read with Section 220(2) of the Income Tax Act but the provisions of Interest Act, 1978 could also be taken into consideration and interest could be charged from the date on which the penalty became due.

13. In the light of the aforesaid, we are of the view that the Recovery Officer was justified in charging interest from the date of the order passed by the Adjudicating Officer.

14. In view of the aforesaid, we find no merit in these appeals and are dismissed. In the circumstances there shall be no order on costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

Sd/-
Justice M.T. Joshi
Judicial Member

12.04.2019
Prepared and compared by:msb