**(1994) 04 MAD CK 0072**

**In the Madras High Court**

**Case No :** Writ Petition No. 4809 of 1982

A. Raman APPELLANT

Vs

Fourth Income Tax Officer and another RESPONDENT

**Date of Decision :** 22-04-1994

**Acts Referred:**

Income Tax Act, 1961 — Section 139, 139(2), 139(8), 148, 271(1)

**Citation :** (1995) 125 CTR 250 : (1995) 212 ITR 81 : (1994) 77 TAXMAN 235

**Hon'ble Judges :** T. Somasundaram, J

**Bench :** Single Bench

**Advocate :** K.M.L. Majele, Deokinandan, for the Appellant;

## Judgement

Somasundaram, J.—The petitioner is an assessee on the file of the first respondent. His case is that for the assessment years 1968-69 to 1975-76, he filed returns u/s 139 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), voluntarily declaring an income of Rs. 12,300, Rs. 12,300, Rs. 10,300, Rs. 10,300, Rs. 10,300, Rs. 10,300, Rs. 10,300, and Rs. 18,500, respectively. The Income Tax Officer made assessments for the above assessment years at Rs. 22,450, Rs. 22,450, Rs. 10,300, Rs. 10,300, Rs. 10,300, Rs. 16,300 and Rs. 18,500 and made a demand a Rs. 4,022, Rs. 3,338, Rs. 386, Rs. 606, Rs. 606, Rs. 606, Rs. 1,028 and Rs. 935, respectively. For the above assessment years, the Income Tax Officer levied interest u/s 139(8) of the Act at Rs. 3,410, Rs. 2,516, Rs. 210, Rs. 360, Rs. 312, Rs. 240, Rs. 280 and Rs. 140; u/s 217 of the Act at Rs. 2,820, Rs. 2,126, Rs. 260, Rs. 426, Rs. 336, Rs. 252, Rs. 320 and Rs. 180 and penalty u/s 271(1)(a) at Rs. 2,010, Rs. 1,670, Rs. 200, Rs. 300, Rs. 300, Rs. 300, Rs. 540 and Rs. 280 u/s 273(b) and Rs. 300 and Rs. 250 respectively. The total interest payable u/s 139(8) was Rs. 7,468 and u/s 217, Rs. 6,720. The total penalty payable u/s 271(1)(a) was Rs. 5,600 and u/s 273(b), Rs. 500. Thereafter, on February 19, 1980, the petitioner filed an application before the second respondent u/s 273A of the Act for the waiver of the interest and penalties levied under sections 139(8), 217, 271(1)(a) and

 

273(b) of the Act, on the ground that the petitioner had filed the returns voluntarily and that he made full disclosure and, therefore, he has satisfied the conditions laid down u/s 273A of the Act. The second respondent passed an order dated July 10, 1981, rejecting the petition on the ground that the petitioner had not made a full disclosure.

2. Aggrieved by the order of the second respondent dated July 10, 1981, the petitioner has filed the present writ petition for the issue of a certiorarified mandamus to quash the order of the second respondent in C. N. 1264/179/79/ CBE, dated July 1, 1981, and to direct the respondent to grant reliefs as prayed for in this petition dated February 19, 1980.

3. Mr. R. Janakiraman, learned counsel for the petitioner, submits that the petitioner filed returns u/s 139 of the Act, voluntarily disclosing the entire income for the relevant assessment years, that inasmuch as the petitioner has made full disclosure, and thereby satisfied the conditions laid down u/s 273A of the Act, the second respondent is bound to grant the petitioner the relief of waiver of interest and penalties levied on the petitioner. I am unable to accept the above contention of learned counsel for the petitioner. Section 273A of the Act contemplates a full disclosure by the assessee of his income voluntarily and in good faith before the issue of notice u/s 139(2) of the Act. It is seen from the reply dated July 9, 1981, submitted by the petitioner before the second respondent to the notice of hearing u/s 273A of the Act, that the case of the petitioner before the second respondent is that the petition u/s 273A was filed on June 25, 1975, making full disclosure of the total income of the assessee, and that the notices under sections 139 and 148 were issued to the petitioner on January 30, 1976, and, therefore, the petitioner is entitled to the relief u/s 273A of the Act. However, the case of the petitioner in the present writ petition is that, since he had field the returns u/s 139 voluntarily disclosing his total income for the relevant years, he is entitled to the reliefs u/s 273A of the Act.

4. The materials on record show that the notice under sections 139(2) and 148 was served on the petitioner on January 30, 1976, and only thereafter the petitioner has field his returns. It must be pointed out that, as per the provisions of the Act, one of the conditions prescribed for getting the relief u/s 273A is that the assessee should have voluntarily and in good faith made full disclosure of his income prior to the issue of notices to him u/s 139(2) of the Act. Inasmuch as full disclosure by the assessee of his income was not voluntarily made in the present case by filing the returns before the issue of notice u/s 139(2) of the Act, the petitioner is not entitled to the relief of waiver of interest and penalties u/s 273A of the Act.

5. The next question we have to examine is, whether the letter dated June 25, 1975, submitted by the assessee intimating the acquisitions made by him between the period from April 29, 1963, to June 4, 1974, would amount to a disclosure of total income for each year and whether on the basis of the letter dated June 25, 1975, the petitioner is entitled to the relief u/s 273A of the Act.

 

The letter dated June 25, 1975, reads thus :

"I am a resident in the above address and have acquired the following properties. I am not assessed to Income Tax so far. I am taking steps to engage an auditor to prepare my returns of income taking into account the acquisitions made by me so far. I am mainly an agriculturist and am completely ignorant of the taxation laws. Hence I request that all the benefits contemplated u/s 271(4)(a) of the Act may kindly be extended to me. I may also be given two months'' time to file the returns of income.

List of acquisitions :

---------------------------------------------------------------------- Sl. No. Nature of properties Date Amount ---------------------------------------------------------------------- (Rs.) 1. Plot 29-4-1963 2,000 2. Agricultural lands 31-1-1968 15,000 3. House 9-2-1968 13,000 4. Agricultural lands 26-3-1969 45,000 5. Plot 1-2-1971 2,000 6. Agricultural lands 7-2-1974 37,500 7. do. 7-2-1974 37,500 8. do. 4-6-1974 25,000 ---------- 1,77,000 ----------------------------------------------------------------------

Return form u/s 139 may kindly be sent to me."

6. In the letter referred to above, the petitioner gives only the list of investments made by him from April 29, 1963, to June 4, 1974, showing a total investment of Rs. 1,77,000. In the said letter, the petitioner has not declared the income for each year. Further, as seen from the order of the second respondent, the income disclosed for the relevant assessment years in the return is Rs. 1,06,000 as against the investments of Rs. 1,77,000 intimated to the first respondent in the letter dated June 25, 1975. In these circumstances, it is not at all possible to hold that the letter dated June 25, 1975, intimating the investments alone, contains a full, true and complete disclosure of the total income of the assessee for the assessment years in question, and inasmuch as the letter dated June 25, 1975, does not give the full and true disclosure of the petitioner''s total income, the petitioner is not entitled to the relief u/s 273A of the Act.

7. In these circumstances, I am of the view that the second respondent rightly refused to grant the relief to the petitioner u/s 273A of the Act. I see no infirmity in the order challenged in this writ petition warranting interference in the proceedings under article 226 of the Constitution of India. There is no merit in this writ petition and it is liable to be dismissed. Accordingly, the writ petition is dismissed. No costs.

 