

(1989) 06 CAL CK 0016
In the Calcutta High Court
Case No : Civil Revision No. 6255 (W) of 1977

Amin Chand Payarelal

APPELLANT

Vs

Inspecting Assistant Commissioner of Income Tax Range-1
(Central) and Others

RESPONDENT

Date of Decision : 15-06-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 139, 139(1), 271(1)

Citation : (1989) 78 CTR 84 : (1989) 180 ITR 330 : (1990) 49 TAXMAN 266

Hon'ble Judges : Susanta Chatterjee, J

Bench : Single Bench

Advocate : D. Pal and A.K. Roychoudhury, for the Appellant; A.C. Moitra, for the Respondent

Judgement

Susanta Chatterjee, J.—The present rule was issued on December 12, 1977, at the instance of the writ petitioner, Amin Chand Payarelal, a partnership firm, praying, inter alia, for an appropriate writ commanding the respondents to cancel and/or withdraw the order dated September 26, 1974, passed by respondent No. 2, Commissioner of Income Tax, Central-I, Calcutta, orders of assessment and the penalty proceeding u/s 271(1)(a) of the Income Tax Act, demand notice u/s 156 of the said Act and the penalty orders dated October 7, 1974. It is stated that the notices u/s 271(1)(a) read with Section 274 of the said Act were issued on October 4, 1974, by respondent No. 4, Inspecting Assistant Commissioner of Income Tax, Range-V (Central), Calcutta, without having any competence, authority and/or jurisdiction under the new Act as it appeared to the Inspecting Assistant Commissioner of Income Tax, Range-V (Central), Calcutta, that the petitioner had, without reasonable cause, failed to furnish the return of total income which the petitioner was required to furnish u/s 22(2) of the old Act or u/s 139 of the new Act within the time allowed for the respective assessment years as aforesaid. It is alleged that Section 271 of the new Act does not authorise the Inspecting Assistant Commissioner of Income Tax to be satisfied that the

petitioner had, without reasonable cause, failed to furnish the return within the time allowed. Consequently, the proceedings u/s 271(1) of the new Act are illegal, invalid and without jurisdiction, as submitted. It is the case of the petitioner that, on an application dated May 16, 1974, the Commissioner of Income Tax (Central), Calcutta, passed an order for determination of tax liabilities for the assessment years 1959-60 to 1965-66. It will appear from the said order dated September 26, 1974, that so far as the penalty for the assessment years 1959-60 to 1965-66 are concerned, the penalty will not be either waived or reduced. The penalty will, however, be limited to the minimum possible under the Act. According to the petitioner, the assessments for the assessment years 1959-60 to 1965-66 were all completed on October 4, 1974, u/s 23(3) of the old Act and u/s 143(3) of the new Act by the Inspecting Assistant Commissioner of Income Tax, Range-V (Central), Calcutta, on the basis of the revised returns furnished by the petitioner u/s 22(3) of the old Act and Section 139(5) of the new Act. All the assessments, according to the petitioner, were made originally by the Income Tax Officer by complying with the provisions and was barred and/or valid under the relevant old Act or the new Act. The Inspecting Assistant Commissioner of Income Tax, respondent No. 4 herein, for the first time, completed the assessment on the basis of the revised returns filed by the petitioner u/s 22(3) of the old Act and Section 139(5) of the new Act. The orders of assessment and the penalty notice u/s 274 for not filing the return within the time allowed were separately issued.

2. The grievance of the petitioner is that respondent No. 4, having no competence, authority or jurisdiction to issue the demand notice u/s 29 of the old Act and/or u/s 156 of the new Act had taken steps demanding the penalty for each assessment year. Elaborating all these facts, the petitioner moved the writ jurisdiction of this court on the ground that even if it is contended that in view of the exercise of the power by the Commissioner u/s 125 and 125A of the Act, the Inspecting Assistant Commissioner of Income Tax has been authorised to make assessments on the petitioner, such authority in any event does not give the Inspecting Assistant Commissioner any power of imposition of penalty u/s 271 read with Section 274 of the new Act without the case being transferred to him by the proper authority under the new Act.

3. Dr. Pal, appearing for the writ petitioner, has argued with force that the power conferred upon the Inspecting Assistant Commissioner of Income Tax under sections 125 and 125A of the Act by the Commissioner of Income Tax was only with respect to the making of the assessment, if any, and no such power has been conferred or will be conferred upon the Inspecting Assistant Commissioner of Income Tax to exercise the power of imposing the penalty u/s 274 read with Section 271(1)(a) of the new Act and, as such, the Inspecting Assistant Commissioner of Income Tax has no competence, authority and/or jurisdiction to initiate penalty proceedings and pass the order for penalty. He has also submitted that respondent No. 4, before imposition of penalty, has failed to consider the tax paid by the partner before issue of the demand notice under the

relevant section of the new Act and, as such, the imposition of penalty u/s 271(1) (a) of the new Act is illegal and in excess of jurisdiction. The delay in filing the return was duly explained before respondent No. 4 and there was no material on record to show that the explanation given by the petitioner was not based on any fact and, as such, there was no offence committed by the petitioner. In support of his contention, he has drawn the attention of the court to the decision reported in Commissioner of Income Tax, Andhra Pradesh Vs. M. Chandra Sekhar, . It was found by the Supreme Court of India that the time allowed for furnishing a voluntary return is the time specified in Section 139(1) of the Income Tax Act, 1961. When the Income Tax Officer extends the date for furnishing the return under proviso (iii) to Section 139(1), he does so in exercise of the authority conferred by the statute and the additional time available to the assessee consequent upon such extension is, for all relevant purposes, of the same character and as effective as the statutory period specifically enacted by Parliament. It constitutes an integral part of the time allowed for furnishing a return. Therefore, where the Income Tax Officer extends the date, then all the time up to that date is the time allowed for furnishing the return. The additional period consequent upon such extension falls within the expression "the time allowed" in Clause (a) of Section 271(1) and the penalty provisions do not come into play during the period of extension of time by the income tax Officer. It has also been observed that, from the language of proviso (iii) to Section 139(1), it is apparent that interest becomes payable only upon the Income Tax Officer acting, on an application made by the assessee for the purpose and extending the date for furnishing the return. The ratio of the said decision is (i) that in the ordinary course of things, the Income Tax Officer could have extended the date only upon being satisfied that there was good reason for doing so, and that would have been on the grounds pleaded by the assessee and that in the circumstances of this case, a presumption could validly be raised that all that was done ; (it) that, on the facts, the extension was a matter falling within Section 139(1) and the returns furnished by the assessee must be attributed to that provision ; they were not returns furnished within the contemplation of Section 139(4) ; (iii) that, therefore, the penalty provisions did not come into play at all.

4. Learned lawyer appearing for the Income Tax authorities has, however, submitted that the acts done and/or caused to have been done by the respondent are well-justified and in accordance with law and the acts complained of are neither contrary to and/or inconsistent with the provisions of the Income Tax Act and the allegations in the writ petition are otherwise unwarranted and uncalled for.

5. With all anxiety, this court has heard the arguments advanced on behalf of the respective parties. Undisputedly, the petitioner has paid all Income Tax dues and the grievance of the petitioner is only against the imposition of penalty and the notice of demand in this behalf. The question to be decided in this writ petition is as to whether the steps taken by the respondents to impose penalty are without jurisdiction or not. Regard being had to the facts of this case and applying the

test laid down by the Supreme Court, this court finds that the Inspecting Assistant Commissioner of Income Tax has no jurisdiction to impose penalty. Time is already extended to file the return and the assessed amount being paid should be deemed to have been paid within the extended time and there cannot be any further demand for penalty in the manner sought to be done in the instant case.

6. For the foregoing reasons, this court does not find any bar and/or impediment to granting the limited relief to the petitioner only against the imposition of penalty. The writ petition is thus allowed in part, directing the respondents to withdraw and/or cancel the notice of demand for realisation of penalty for the assessment years 1959-60 to 1965-66. The rule is thus disposed of as indicated above and the interim order, if any, is vacated.

7. There will be no order as to costs.