(1991) 05 DEL CK 0022

In the Delhi High Court

Case No : Civil Writ Petition No. 1353 of 1991

Amrit Narain APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 07-05-1991

Acts Referred:

Citation : (1991) 96 CTR 34 : (1991) 190 ITR 644

Hon'ble Judges : D.K. Jain, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : K.P. Bhatnagar, for the Appellant;

Judgement

B.N. Kirpal, J.—In respect of the assessment years 1980-81 and 1981-82, the petitioner had filed returns of income late by 7 months and 20 months respectively. In addition to the levy of Income Tax, the assessing authority levied penalty and interest for the late filing of the return and for non-payment of advance tax.

2. It appears that the petitioner filed an application to the Commissioner of Income Tax u/s 273A section waiver of penalty and also waiver of interest u/s 139(8) and 215.

3. The Commissioner of Income Tax, vide impugned order dated November 6, 1990, came to the conclusion that the conditions specified in section 273A which would give jurisdiction to reduce or waive penalty and interest existed. It was held that though the return were filed late, they have been filed voluntarily prior to the issuance of notice u/s 139(2) or 148. It was also held that the petitioner had made full and true disclosures and that it co-operated with the inquiries relating to the assessment and the entire tax demand on completion thereof had been paid. Having come to this conclusion, the commissioner of Income Tax reduced the penalty and interest by 50% in respect of both the years.

4. The grievance of the petitioner in the present case is that the discretion has not been exercised judicially by the Commissioner. It is contended by learned

counsel that the catena of authorities shows that the jurisdiction which is exercised u/s 273A has to be a judicial decision and there must be some reason for the Commissioner of Income Tax to justify the reduction only up to 50%. Learned counsel submits that, having come to the conclusion that the aforesaid three conditions were satisfied, the Commissioner should have waived the penalty and interest in toto.

5. Section 273A gives jurisdiction to the Commissioner of Income Tax either to reduce or waive the penalty and interest. This jurisdiction is granted only if the aforesaid three conditions are satisfied, as they were in the present case. If any of the three conditions were not satisfied, then the Commissioner could not possibly have exercised his jurisdiction u/s 273A and either granted the reduction or waiver. Therefore, the mere fact that the three conditions satisfied would not by itself be a ground for insisting on total waiver of penalty and interest. Had this been so, then the Legislature would have provided that, on the three conditions being satisfied, the commissioner of Income Tax shall waive the penalty and interest in its entirety.

6. It is clear that the Legislature has left the discretion with the Commissioner of Income Tax and the Income Tax Commissioner is a high functionary and merely because the discretion is left with the functionary, it cannot mean that the said provision is arbitrary. The discretion, of course, has to be exercised Judicially. If the discretion has not been properly exercised, then it cannot mean that the application of the petitioner u/s 273A has to be allowed. The non-exercise or improper exercise of the discretion would only result in the relief not being granted to the assessed, which would possibly require reconsideration of the application by the Commissioner of Income Tax. In the present case, however, we do not find any material to show that there has been any improper exercise of discretion. In the very nature of things, it is the Commissioner who is to exercise his discretion to decide whether to waive the penalty or interest or to reduce it. If he decides to reduce, then the quantum of the reduction has also to be decided by him at his discretion. There can be no mathematical formula when discretion is to be exercised in determining as to how the discretion should be exercised. The exercise of the discretion must depend on the facts and circumstances of each case. It is apparent from the impugned order that the commissioner of Income Tax has taken into consideration the extent of the delay in filing the returns or payments of advance tax. For the year 1980-81, the delay was 7 months and for the year 1981-82 the delay was 20 months. The taxable income of the assessed is high and, taking the overall circumstances into consideration, it is not possible for us to come to the conclusion that the discretion has not been properly exercised. Unless it can be demonstrated that there has been improper exercise of the discretion, the court, in exercise of its jurisdiction under article 226 of the Constitution, should ordinarily not interfere. We see no merit in this writ petition. Dismissed.

