(1985) 08 P&H CK 0106

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4977 of 1981

Arjan Dass APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 07-08-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 273A

Citation : (1986) 160 ITR 155

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : Bhagirath Dass, B.R. Mahajan and Ramesh Kumar, for the Appellant; Ashok Bhan and Ajay Mittal, for the Respondent

Judgement

I.S. Tiwana, J.—The petitioner impugns the order of the Commissioner of Income Tax dated June 3, 1981 (annexure P. 8), whereby his petition u/s 273A of the Income Tax Act for waiver of various penalties and interest levied under various sections of the Act for the assessment years 1969-70 to 1978-79 has been rejected primarily on the ground that he had filed the returns for the years 1969-70 to 1977-78 after the issuance of notices u/s 148 of the Act and in the light of that it could not be held that the returns had been filed voluntarily.

2. It is not in dispute that a survey was conducted by the Department u/s 133A of the Act at the business premises of the assessee on February 16, 1978, and as a consequence thereof, certain assets worth Rs, 5,33,847 were discovered and on the basis of the same, liabilities to the extent of Rs. 2,11,912 were claimed by him. After working out the details of assets and liabilities and expenses etc., over the period covered by assessment years 1969-70 to 1978-79, the total income for the ten years was worked out at Rs. 3,23,935 besides income at the rate of Rs. 1,000 per annum from the self-occupied property of the assessee. In the light of all this, the amount to be taxed over these years thus worked out to Rs. 2,53,000 and this was accepted by the assessee as per the settlement order

dated March 30, 1978 (annexure P. 2). As per this order, the assessee also agreed that penalties and interest under various sections were leviable and were, to be charged from him as per the provisions of the Act. It was in the light of this that he claimed the waiver of penalties and interest under different heads specified in Section 273A. As already pointed out above, the Commissioner has turned down this request of his solely on the ground that the returns filed by the assessee could not be held to be voluntary returns as notices u/s 148 had already been issued to him for those assessment years. This factual finding of the Commissioner is controverted by the petitioner in paragraph 9 of the petition in which the various dates on which the returns had been filed by him for different assessment years and the notices u/s 148 were issued to him are given. These are as follows :

Assessment year

Date of filing return/revised return

Date of issue of notice u/s 148

Date of assessment

1969-70

30-3-1978

31-3-1978

29-2-1980

1970-71

14-4-1978

26-3-1979

29-2-1980

1971-72

14-4-1978

31-10-1979

29-2-1980

1972-73

14-4-1978

31-10-1979

29-2-1980

1973-74

14-4-1978

31-10-1979

29-2-1980

1974-75

14-4-1978

26-3-1979

29-2-1980

1975-76

14-4-1978

26-3-1979

29-2-1980

1976-77

14-4-1978

26-3-1979

3-4-1979

1977-78

14-4-1978

6-2-1980

29-2-1980

1978-79

16-8-1978

No notice.

28-8-1980

(Within time undersection 139(1) of the Act).

3. No return has been filed on behalf of the respondent authorities to controvert this factual assertion on the part of the petitioner. In the absence of any denial on the part of the respondent authorities, the assertions made in this paragraph of the petition have obviously to be accepted for purposes of this judgment. It is thus established that the factual premises on the basis of which the Commissioner passed the impugned order, annexure P-8, were not there. Besides this, the learned counsel for the petitioner again appears to be right in submitting that the assessee had claimed waiver of penalties under three heads

as specified u/s 273A of the Act but the learned Commissioner has not even adverted to those claims while passing the impugned order.

4. In the light of the above, I allow this petition and set aside the order, annexure P-8, with the direction that the case be sent back to the Commissioner to go into the matter afresh in accordance with law and the observations made above. I pass no order as to costs.

