(1993) 12 MAD CK 0077

In the Madras High Court

Case No : Writ Petition No. 752 of 1979

B. Thangammal APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 21-12-1993

Acts Referred:
Income Tax Act, 1961 — Section 139, 139(2), 148, 271(4A), 273A

Citation : (1995) 215 ITR 261

Hon'ble Judges : Venkataswami, J

Bench : Single Bench

Advocate : K. Ramagopal, for the Appellant; N.V. Balasubramanian, for the Respondent

Judgement

Venkataswami, J.—The petitioner is aggrieved by an order of the respondent, dt. 27th Jan., 1978, passed under s. 273A of the IT Act, 1961 (hereinafter referred to as "the Act").

2. The brief facts are the following : The petitioner filed IT returns for the asst. yrs. 1968-69 to 1975-76, on 24th Jan., 1977. While passing orders on the returns, the ITO levied interest under s. 139 as well as s. 217 of the Act for each year. The petitioner, aggrieved by the levy of interest as mentioned above, preferred an application under s. 273A of the Act for waiver of the same.

3. By the impugned order, the respondent found as follows :

"..... I find that, even though the assessee filed the returns of income voluntarily before the issue of notices under s. 139(2)/148 of the IT Act, she cannot be treated to have complied with the provisions of s. 273A for the purpose of waiver of interest and penalty. For the asst. yrs. 1974-75 and 1975-76, the assessee has not paid even the tax on the admitted income and the entire tax raised by the ITO is still outstanding. For the asst. yrs. 1968-69 to 1973-74, there are still tax arrears (which are final) and the assessee has not made any arrangements for their payment....."

In addition to the above, the respondent also found that the assessee was prompted to file the returns of income only because of an investment made in the purchase of a plot of land and the construction of a house thereon. Ultimately, the respondent found that the assessee cannot be said to have satisfied the conditions stipulated in s. 273A of the Act for the purpose of waiver of penalty and interest. On that ground, the application under s. 273A of the Act was rejected in toto. 3. Mr. K. Ramagopal, learned counsel appearing for the petitioner, repeatedly pointed out that the order passed by the respondent is violative of the principles of natural justice, and on that ground, it must be set aside and the matter must be remanded back to the respondent for passing orders afresh. He also submitted that the finding that the petitioner has not complied with the conditions precedent for invoking s. 273A of the Act was also not correct as the petitioner has paid the taxes on the basis of the returns submitted by her for most of the years and at least for those years, the respondent should have exercised the discretion and waived the interest. He relied on a judgment of this Court in K.C. Vedadri Vs. Commissioner of Income Tax, .

Mr. N. V. Balasubramanian, learned counsel appearing for the respondent-Revenue, contending contra, submitted that there is no substance in the argument of learned counsel for the petitioner that the respondent had violated the principles of natural justice. Apart from pointing out the fact that the petitioner was represented by one P. Gopalakrishna Rao, a person authorised by the assessee to appear on her behalf before the respondent, he also invited my attention to the files wherein the fact of giving an opportunity to the assessee through her representative was found. Learned counsel further submitted that the finding of the respondent that the assessee had not complied with the conditions precedent for invoking s. 273A of the Act is obsolutely right and the contention to the contrary is not correct. He placed reliance on a judgment of the Kerala High Court in P.A. Mohammed Abdul Khader and Co. Vs. Commissioner of Income Tax and Another, .

4. I have considered the rival submissions.

5. Let me first consider the contention of learned counsel for the petitioner on the violation of the principles of natural justice. I find from the order as well as from the files that the petitioner was represented by a person authorised by her, who was in possession of all the relevant records. The order also mentions about the presence of one Gopalakrishnan representing the petitioner. The contention that the petitioner''s representative was not allowed to argue the matter, cannot be accepted. I do not think, on a perusal of the records and the impugned order, the contention that the petitioner was not given a reasonable opportunity to put forward her case through her representative, can be accepted. I, therefore, reject the contention based on the violation of the principles of natural justice.

6. The conditions precedent for invoking s. 273A of the Act appear in cl. (iii) of that section which reads as follows : " (c) in the cases referred to in cl. (iii) has,

prior to the issue of a notice to him under sub-s. (2) of s. 139, or where no such notice has been issued and the period for the issue of such notice has expired, prior to the issue of notice to him under s. 148, voluntarily and in good faith made full and true disclosure of his income and has paid the tax on the income so disclosed, and also has, in all cases referred to in cls. (a), (b) and (c), co-operated in any enquiry relating to the assessment of his income and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assessment year."

It is common ground that while submitting the returns, the petitioner had not paid the tax on the admitted income for the asst. yrs. 1974-75 and 1975-76, vide paragraph 5 of the affidavit filed in support of this writ petition. Likewise, it is common ground that the petitioner has not paid the difference in tax between the income returned and the income assessed for all the other years. This being the admitted position, can it be said that she has complied with the conditions precedent for invoking s. 273A of the IT Act. The possible answer could be only in the negative. Therefore, there is no difficulty in upholding the order of the respondent, who has rejected the application under s. 273A of the Act, for non-compliance with the conditions precedent for invoking s. 273A of the Act.

In K. C. Vedadri vs. CIT (supra), the passage relied on by learned counsel for the petitioner reads as follows :

"Though the word used in s. 271(4A) is ''discretion'' it is obvious that the CIT who is deemed to be a quasi-judicial tribunal for the purpose under consideration, should see that no principles of natural justice are violated or no set prescriptions of law are ignored and that in any event he should judicially view the entire material before him and thereafter exercise his so-called discretion judiciously under this sub-clause."

I have already found in this case, on the facts, that there is no violation of the principles of natural justice. Therefore, this judgment in K. C. Vedadri vs. CIT (supra) has no application to the facts of this case.

The Kerala High Court in P. A. Mohammed Abdul Khader & Co. vs. CIT (supra), on the scope of s. 273A of the Act, has held that unless the conditions precedent contemplated under s. 273A of the Act are complied with, the assessee cannot invoke the provisions of that section. This ratio squarely applies to the facts of the case on hand.

7. In the result, the writ petition fails and it is dismissed. No costs.

