(1992) 01 GUJ CK 0020

In the Gujarat High Court

Case No : Special Civil Application No. 2756 of 1990

Bharatkumar Bansilal Choksi APPELLANT

Vs

Central Board of Direct Taxes and Another RESPONDENT

Date of Decision : 31-01-1992

Acts Referred:

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

Citation : (1992) 103 CTR 8 : (1992) 196 ITR 212

Hon'ble Judges : R.C. Mankad, Acting C.J.;S.D. Shah, J

Bench : Division Bench

Advocate : K.H. Kaji, for the Appellant; M.J. Thakore, for the Respondent

Judgement

R.C. Mankad, Actg. C.J.

1. The petitioner is an individual whose main source of income is partnership share from Messrs. Munsilal Shankarlal. There was delay in the filing of his returns of income for the assessment years 1974-75, 1975-76, 1976-77, 1981-82 and 1985-86. The Income Tax Officer levied penalty u/s 271(1)(a) and section 273 and interest u/s 139(8) and section 217 of the Income Tax Act, 1961 ("Act" for short), for the assessment years 1974-75 to 1976-77. He levied interest u/s 139(8) and section 217 of the Act for assessment year 1981-82. So far as the assessment year 1985-86 was concerned, he levied interest u/s 139(8) and section 217 of the Act. There is nothing on record to indicate whether any penalty was levied on the petitioner u/s 271(1)(a) and section 273 of the Act for the assessment years 1981-82 and 1985-86. The petitioner made a common application u/s 273A of the Act for waiver of penalty and interest levied for the aforesaid assessment years to the Commissioner of Income Tax, Vadodara ("Commissioner" for short). The Commissioner was of the view that relief u/s 273A could be given only in respect of one assessment year. He, therefore, by his order dated December 19, 1989, exhibit B(2), considered the petitioner''s application for the assessment year 1974-75, which was the first year of default and since the requisite conditions were satisfied, he fully waived penalty and

interest levied for the said assessment year as aforesaid. The petitioner''s contention is that the Commissioner had power to waive penalty and interest in respect of more than one assessment year and, therefore, he was not right in granting relief to him only in respect of the assessment year 1974-75. The petitioner has, therefore, filed this petition seeking appropriate directions against the Commissioner who is the respondent herein. It may be mentioned here that originally this petition was both on behalf of the present petitioner as well as the Income Tax Bar Association. The Income Tax Bar Association had filed the petition as a public interest litigation in the interest of all assessees in the State. Later on, however, the Income Tax Bar Association was deleted as a party and the petition confined to the present petitioner for the relief as stated above.

2. A question identical to the one which is raised in this petition was raised in Special Civil Application No. 3583 of 1989 Cheldas Khushaldas Patel and Others Vs. Commissioner of Income Tax, and companion matters, which we have disposed by our judgment delivered today. We have held in our said judgment as follows (at page 207) :

"The Commissioner has been empowered to reduce or waive the amount of penalty imposed or imposable on a person u/s 271(1)(i) for failure, without reasonable cause, to furnish the return of total income which he was required to furnish under sub-section (1) of section 139 or to reduce or waive the amount of interest paid or payable under sub-section (8) of section 139 or section 215 or section 217 or the penalty imposed or imposable u/s 273. So far as reduction or waiver of amount of penalty imposed or imposable u/s 271(1)(i) is concerned, a person seeking reduction or waiver of penalty has to satisfy the Commissioner that he has, prior to issue of notice to him under sub-section (2) of section 139, voluntarily and in good faith made a full and true disclosure of his income. So far as reduction or waiver of interest payable u/s 139(8) or section 215 or section 217 or penalty imposed or imposable u/s 273 is concerned, the person seeking reduction or waiver of penalty or interest has to satisfy the Commissioner that he has, prior to issue of notice to him under sub-section (2) of section 139, or where no such notice has been issued and the period for the issue of such notice has expired, and prior to issue of notice to him u/s 148, voluntarily and in good faith made a full and true disclosure of his income and has paid tax on the income so disclosed. Sub-section (3) lays down that, where an order has been made under sub-section (1) in favour of any person, whether such order relates to one or more assessment years, he shall not be entitled to any relief under this section in relation to any other assessment year at any time after the making of such order. This sub-section clearly indicates that the order under sub-section (1) may relate to one or more assessment years. It would thus appear that, u/s 273A(1), the Commissioner may either suo motu or otherwise waive penalty and/or interest in respect of one or more years. It is open to an assessee to move the Commissioner for waiver of penalty and interest for one or more years. The Commissioner is empowered to take up for consideration the question of waiver of penalty and/or interest for one or more assessment years. However, once an order waiving penalty and interest in respect of one or more assessment years is made in respect of an assessee, no order granting such relief for any other assessment year can be made in favour of the same assessee."

3. In view of the said decision, it must be said that the respondent Commissioner was not right in taking the view to the effect that the power to give relief u/s 273A could be exercised in respect of one year. This petition, must, therefore, succeed.

4. In the result, we allow this petition and direct the respondent Commissioner to decide the application of the petitioner for waiver of interest and/or penalty in respect of the remaining assessment years, namely, 1975-76, 1976-77, 1981-82 and 1985-86, referred to above, afresh in accordance with law after giving an opportunity of being heard to the petitioner in the light of the aforesaid observations and the decision of this court in Special Civil Application No. 3583 of 1989 and companion matters. Rule made absolute accordingly with no order as to costs.