(1998) 11 KAR CK 0004

In the Karnataka High Court

Case No : Writ Appeal No. 4830 of 1998

C.G. Krishna Prasad — APPELLANT

Vs

Commissioner of Income Tax and Another — RESPONDENT

Date of Decision : 16-11-1998

Acts Referred:
Income Tax Act, 1961 — Section 139, 139 (2), 143 (3), 148, 217

Citation : (2000) 162 CTR 354 : (1999) 238 ITR 276

Hon'ble Judges : Y. Bhaskar Rao, J;A.M. Farooq, J

Bench : Division Bench

Advocate : S. Ganesha Rao, for the Appellant; M.V. Seshachala, for the Respondent

Judgement

Y. Bhaskar Rao, J.—This writ appeal is filed assailing the order of the learned single judge (see, C.G. Krishna Prasad Vs. Commissioner of Income Tax and Another, , dismissing the writ petition.

2. The brief facts of the case are that the appellant is an assessee under the Income Tax Act, 1961. The undisputed facts are that the appellant filed his return on November 10, 1989, for the assessment year 1987-88 declaring his total income as Rs. 13,220. This was followed by a revised return filed on March 16, 1990, disclosing an income of Rs. 1,26,220. The return was further revised by the appellant on April 22, 1990, disclosing an income of Rs. 2,69,880. An amount of Rs. 1,09,190 was payable as tax on the income disclosed in the second revised return, but he paid along with the second revised return a sum of Rs. 1,02,180 only leaving behind a balance of Rs. 7,010 unpaid. The assessing authority completed the assessment u/s 143(3) of the Income Tax Act and demanded the balance amount of Rs. 7,010 on March 29, 1990. The appellant paid the balance amount on April 13, 1990. The assessing authority levied interest amounting to Rs. 36,821 u/s 139(8) and Rs. 47,556 u/s 217 of the Income Tax Act, 1961 (the "Act" for short). The petitioner filed an application before the Commissioner u/s 273A of the Act on April 25, 1990. By his order dated August 5, 1992, the

Commissioner dismissed the application on the ground that the appellant failed to comply with basic requirement of payment of tax on the amount disclosed and was, therefore, not entitled to claim either waiver or reduction of the interest amount levied. Against that order the petitioner filed a writ petition. The learned single judge dismissed the writ petition holding that the appellant has not paid the total tax on the declared income along with the revised return, therefore he is not entitled for the benefit of waiver or reduction of interest. Against that the present appeal is filed.

3. Learned counsel for the appellant contended that he has voluntarily filed the revised returns before any notice is issued u/s 139(2) or u/s 148 of the Act. He has paid the self-assessed tax along with the second return as per his calculation. There was a mistake in calculations. As soon as the assessing authority passed an order and issued a demand notice on March 29, 1990, he paid the balance amount of Rs. 7,010 before April 30, 1990, upto which the time was granted for payment of the amount. Therefore, there is a compliance with the requirements provided under Clause (iii) of Section 273A(1) of the Act. Therefore, he is entitled for the waiver.

4. Learned standing counsel for Income Tax contended that the appellant has not paid the advance tax, therefore, as per Section 139 of the Act the assessing authority has correctly levied the interest and as the appellant has not paid the advance tax the question of granting waiver does not arise and the Commissioner and the learned single judge have rightly rejected the same.

5. In view of the abovesaid contentions, the point for consideration is whether an assessee is entitled for the waiver of interest when he has paid the self-assessed tax along with the revised return which he filed voluntarily.

6. Section 139(8)(a) of the Act as it stood then provides for levying of interest where the return is filed after the specified date or not furnished or time is extended for filing the return, provided that the Assessing Officer may, in such cases and under such circumstances as may be prescribed, reduce or waive the interest payable by any assessee under this Sub-section. Rule 1(a) (sic) prescribes the conditions requisite for the reduction or for waiving of interest.

7. Section 217 provides for the payment of interest by the assessee when no estimate is made. It provides thus :

"217. (1) Where, on making the regular assessment, the Assessing Officer finds-

(a) that any such person as is referred to in Clause (a) of Sub-section (1) of Section 209A has not sent the statement referred to in that clause or the estimate in lieu of such statement referred to in Sub-section (2) of that section ; or

(b) that any such person as is referred to in Clause (b) of Sub-section (1) of Section 209A has not sent the estimate referred to in that clause, simple interest at the rate of 15 per cent, per annum from the 1st day of April next following the financial year in which the advance tax was payable in accordance with the said Sub-section (1) or Sub-section (2) up to the date of the regular assessment shall be payable by the assessee upon the amount equal to the assessed tax as defined in Sub-section (5) of Section 215.

(1A) Where, on making the regular assessment, the Assessing Officer finds that any person who is required to send an estimate under Sub-section (4) of Section 209A or any such person as is referred to in Sub-section (3A) of Section 212 has not sent the estimate referred to therein, simple interest at the rate of fifteen per cent, per annum from the 1st day of April next following the financial year in which the advance tax was payable in accordance with the said Sub-section (4) or, as the case may be, Sub-section (3A) up to the date of the regular assessment shall be payable by the assessee upon the amount by which the advance tax paid by him falls short of the assessed tax as defined in Sub-section (5) of Section 215.

(2) The provisions of Sub-sections (2), (3) and (4) of Section 215 shall apply to interest payable under this section as they apply to interest payable under that section."

Section 273A as it stood then confers powers on the Commissioner for waiving of interest notwithstanding any provisions in the Act. It is relevant to extract Section 273A(1)(iii)(c) of the Act :

"273A. (1) Notwithstanding anything contained in this Act, the Commissioner may, in his discretion, whether on his own motion or otherwise,--. . .

if he is satisfied that such person--. . .

and also has, in the case referred to in Clause (b), 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.

Explanation.--For the purposes of this Sub-section a person shall be deemed to have made full and true disclosure of his income or of the particulars relating thereto in any case where the excess of income assessed over the income returned is of such a nature as not to attract the provisions of Clause (c) of Sub-section (1) of Section 271."

By reading Section 139(8)(a), Section 217 and Section 273A(1)(iii)(c), it is manifest that a special power is conferred on the Commissioner to waive the interest if conditions laid down in Clause (iii)(c) is satisfied. The two conditions required are as follows :

(1) When a revised return is voluntarily filed before notices u/s 139(2) and Section 148 are issued and the self-assessed tax has to be paid along with the revised return.

(2) The difference of tax as assessed by the authority is paid within the time

prescribed by the assessing authority after the assessment order is passed.

In the present case the assessee has paid self-assessed tax of Rs. 1,02,180 along with the second revised return filed on March 16, 1990. Later on, assessment was made and the assessing authority issued a demand notice on March 29, 1990, demanding Rs. 7,010 on or before April 30, 1990. The appellant paid the same on April 13, 1990, within time. Thus, the appellant has satisfied the two conditions laid down in Section 273A(1)(iii)(e). Therefore, the appellant is entitled for the waiver of interest. Accordingly, the orders of the learned single judge and the Commissioner are set aside and the application filed by the appellant for waiver is allowed and it is declared that the appellant is entitled for waiver of interest levied u/s 139 and Section 217 of the Act. Accordingly, the writ appeal is allowed.