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(1992) 07 KAR CK 0001

In the Karnataka High Court

Case No : Writ Appeal No. 1339 of 1992

Commissioner of Income Tax — APPELLANT

Vs

Mansaram Sukhdev Gunj — RESPONDENT

Date of Decision : 27-07-1992

Acts Referred:

Citation : (1993) 66 TAXMAN 474

Hon'ble Judges : K.A. Swami, Acting C.J.;A.B. Murgod, J

Bench : Division Bench

Advocate : M.V. Seshachala and H. Raghavendra Rao, for the Appellant;

Final Decision : Dismissed

Judgement

Swamy, Actg. C.J.

1. This appeal is preferred against the order dated 16-6-1992 passed by the learned Single Judge in writ petition No. 10682 of 1990. The learned Single Judge has allowed the writ petition set aside the order of the Commissioner and remitted the application filed by the respondent/petitioner u/s 273A of the income tax Act, 1961 (''the Act'') for fresh consideration in accordance with law.

2. The Commissioner took a view that the assessee would be entitled to relief u/s 273A(1) only in respect of the assessment years 1981-82 and 1982-83 whereas the application was filed by the assessee for waiver of penalty in respect of the assessment years 1978-79, 1980-81 to 1986-87.

3. The learned Single Judge has held that there is no such bar contained either in sub-section (1) or sub-section (3) of section 273A. The learned Single Judge has followed a decision of the Allahabad High Court in Ram Sarandas Har Swaroop Mal and Another Vs. Commissioner of Income Tax and Another, In respect of the assessment years 1978-79, 1980-81 to 1986-87, the assessee has filed one application under sub-section (1) of section 273A.

The point for consideration is, what is the scope of sub-section (3) of section

273A. Section 273A deals with the power to reduce or waive penalty, etc., in certain cases. Section 273A(1) provides, as to under what circumstances the penalty can be waived. Section 273A(3) provides thus :

"Whether 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 ?"

While interpreting section 273A(3) the Commissioner has laid stress on the words that ''the assessee 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''. These words only mean that once an order is passed under this sub-section, which may relate to one or more than one year, the assessee will not be entitled to relief under it in respect of any other assessment year/s. But this does not mean that the order under this sub-section must confine to one or two assessment years only as held by the Commissioner. He has failed to notice the words ''whether such order relates to one or more assessment years''. Therefore, the order may relate to one or two years and even to more than two years. The assessee has made one application in respect of the assessment years in question for waiver of penalty. In sub-section (3) of section 273A there is no bar to make one application for more than one assessment year and to consider that application in respect of all the years concerned therein because subsection (3) specifically mentions ''whether such order relates to one or more assessment years''. Therefore, in one application, the assessee can seek for waiver of penalty for more than one year and such application can be considered. The words contained in sub-section (3) of section 273A do not, in any way, prohibit consideration of such application for all the years. Therefore, the learned Single Judge is Justified in quashing the order of the Commissioner. The view taken by the learned Single Judge is fortified by a decision of the Allahabad High Court in Ram Sarandas Har Swaroopmal''s case (supra). In that case, it has been held thus:

"A reading of sub-section shows that, in cases where the requirements mentioned therein are satisfied the Commissioner gets the jurisdiction to waive the penalty or interest, as the case may be. Merely because the conditions mentioned in sub-section (1) are satisfied no assessee can claim a total waiver of penalty/interest. It is a matter within the discretion of the Commissioner. He shall consider all the relevant facts and circumstances of the case and then decide whether penalty/interest should be waived and if so in what measure. Sub-section (3) says that where an order under sub-section (1) has been made once, it shall not be exercised in respect of said person again whether in respect of the same assessment year or any other assessment year. At the same time, sub-section (3) also makes it clear that the order may relate to either one assessment year or more than one assessment year. It is not as if the power under sub-section (1) is available only for one assessment year. The true meaning of sub-section (3) is that the power shall be exercised only once in the case of a given person and not more than once." (p. 45)

Thus, we are of the view that as one application has been filed in respect of the assessment years in question, there is no question of considering the same separately for each assessment year. The application has to be considered only once as the power under sub-section (3) of section 273A(3) can be exercised only once in respect of an assessee and there can be one application relating to one more assessment years. Hence, we are of the view that the Commissioner is not right in holding that the appellant is entitled to the relief u/s 273A only in respect of the assessment years 1981-82 and 1982-83. Accordingly, we agree with the view of the learned Single Judge and dismiss this appeal.