
(1982) 05 AHC CK 0080
In the Allahabad High Court
Case No : Writ Petition No. 248 of 1978

Dhan Raj

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 12-05-1982

Acts Referred:

Income Tax Act, 1961 — Section 139, 139(1), 139(2), 139(4), 139(8)

Citation : (1982) 31 CTR 215 : (1983) 140 ITR 652 : (1983) 12 TAXMAN 93

Hon'ble Judges : R.R. Rastogi, J;K.N. Seth, J

Bench : Division Bench

Advocate : R.K. Gulati, for the Appellant; M. Katju, for the Respondent

Final Decision : Allowed

Judgement

Rastogi, J.—This is a petition under Article 226 of the Constitution of India. The facts are these. For the assessment years 1970-71 to 1973-74 the petitioner made an application on August 28, 1974, u/s 271(1)(a) of the I.T. Act (hereafter "the Act"), to the Commissioner, Kanpur. The petitioner disclosed his income for these years in that petition and made a prayer that penalty as imposable u/s 271(1)(a) and Section 273(b) and interest chargeable u/s 139 and Section 217 of the Act may be waived or reduced. After that disclosure application, the ITO issued notices u/s 148 of the Act and pursuant thereto the assessee filed returns. The ITO made the assessments for these years on January 31, 1975. The details of income returned and assessed were as under :

Assessment year

Income returned

Income assessed

Rs.

Rs.

1970-71

1,388

14,680

1971-72

28,585

29,542

1972-73

21,138

22,310

1973-74

16,386

17,150

2. It may be noted that the difference between the income returned and the income assessed was due to minor adjustments and some add-backs.

3. The ITO also initiated proceedings for the levy of penalty u/s 271(1)(a) and Section 273(b) and after considering the petitioner's explanation imposed penalties. He also charged interest u/s 139(8) and Section 217 of the Act.

4. The petitioner moved an application before the Commissioner on January 12, 1978, u/s 273A of the Act for a waiver of the penalty leviable and the interest chargeable in respect of the assessments for the aforesaid years. The Commissioner took the view that the returns filed for 1970-71 and 1971-72 on September 25, 1974, were invalid returns inasmuch as they had been filed beyond the period provided under Sub-section (1), (2) or (4) of Section 139. In his opinion Section 273A envisages that the assessee voluntarily and in good faith may disclose his income and such disclosure should be made by means of a valid return. According to him the filing of a valid return is a condition precedent for the application of this provision and since for the aforesaid two years the returns filed were not valid returns, the petitioner was not entitled to a waiver of the penalty leviable or the interest chargeable. He accepted the assessee's prayer in regard to the other two years and waived the penalty as also the interest. The petitioner now seeks the quashing of the order dated September 23, 1978, in so far as the assessment years 1970-71 and 1971-72 are concerned. He also prays for a writ of mandamus directing the respondent-Commissioner, Kanpur, to restore the disclosure petition, in so far as it relates to the assessment years 1970-71 and 1971-72, and to decide it afresh in accordance with law and allow the relief as prayed for.

5. There is no dispute in regard to facts. As noted above, the disclosure petition

was in respect of four assessment years, viz., 1970-71 to 1973-74. The Commissioner has accepted the petitioner's contention that the disclosure was made voluntarily and in good faith in respect of these assessment years. Relief has not been allowed for the assessment years 1970-71 and 1971-72, for the reason that such disclosure can be made only through a valid return and since the returns for these years were filed beyond the time-limit prescribed under Sub-sections (1), (2) and (4) of Section 139 of the Act they were invalid returns. We find that this view is manifestly erroneous in law. Section 273A, in so far as it is relevant for the purposes of this case, is as under :

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

(i) reduce or waive the amount of penalty imposed or imposable on a person under Clause (i) of Sub-section (1) of Section 271 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

(ii) reduce or waive the amount of penalty imposed or imposable on a person under Clause (iii) of Sub-section (1) of Section 271; or

(iii) 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,

if he is satisfied that such person-

(a) in the case referred to in Clause (i), has, prior to the issue of a notice to him under Sub-section (2) of Section 139, voluntarily and in good faith made full and true disclosure of his income ;

(b) in the case referred to in Clause (ii), has, prior to the detection by the Income Tax Officer, of the concealment of particulars of income or of the inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made full and true disclosure of such particulars ;

(c) in the cases referred to in Clause (iii), has, prior to the issue of a 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, prior to the issue of notice to him u/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 the cases referred to in Clauses (a), (b) and (c), cooperated 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..... "

6. It would be seen that for reducing or waiving the amount of penalty imposed or imposable u/s 271(1)(c) what is required is that a full and true disclosure of the income should have been made voluntarily and in good faith prior to the issue of notice to him u/s 139(2). Similarly, for reducing or waiving the amount of interest paid or payable under Sub-section (8) of Section 139 or Section 215 or Section 217 full and true disclosure of the income should have been made and tax paid thereon prior to the issue of a notice 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, prior to the issue of notice to him u/s 148. In the instant case, admittedly no notice had been issued to the petitioner under Sub-section (2) of Section 139. He, of course, made a full and true disclosure of his income for these two years after the expiry of the period prescribed under Sub-sections (1), (2) and (4) of Section 139. That was none the less prior to the issue of the notice u/s 148. It may be noted that the notice u/s 148 was issued only after the disclosure petition had been made and pursuant to that notice returns were filed. There is no warrant for saying that full and true disclosure of income can be made only in the return. It can be made by way of a petition and such is the disclosure contemplated by this provision. The main object of this provision is to facilitate voluntary disclosure of concealed income by holding out a temptation to the businessmen of giving reliefs against penalties and interest which they may have been liable to under the normal law. In *JAKHODIA BROTHERS Vs. COMMISSIONER OF Income Tax AND ANOTHER.*, , during the pendency of assessment proceedings of the petitioner-firm for the assessment years 1972-73 and 1973-74, the petitioner filed a disclosure petition on April 24, 1974, disclosing an amount of Rs. 1,25,000 to be assessed in five years from the year 1969-70 to 1973-74, in equal installments. The application also contained a prayer for waiver of penalties u/s 271(4A) of the Act. The Commissioner rejected that application on the ground that it was not maintainable. While completing the assessment orders, the ITO directed that action would be taken against the petitioner u/s 271(1)(c) also. Thereafter, Section 271(4A) having been deleted and replaced by Section 273A, in which the prayer was for waiving the penalties leviable under Sections 271(1)(a), 271(1)(c) and 273(c) as also the interest chargeable under Sections 215 and 217. The Commissioner rejected that application. The petitioner filed a writ petition before this court challenging the order. The petition was allowed and the order of the Commissioner was quashed and he was directed to dispose of the application afresh.

7. The view taken was that the Commissioner was authorised to reduce or waive the penalty which had already been imposed or was liable to be imposed and similarly to reduce or waive the interest which might not have been actually levied but was capable of being imposed in the future. What amounts to good faith was also explained. It is not necessary for us to dwell on this aspect any

further because it is not disputed that a full and true disclosure was made by the petitioner and that it was made in good faith. In our opinion, the Commissioner was wrong in taking the view that the disclosure was required to be made by means of a valid return.

8. Accordingly, we allow this writ petition and quash the impugned order dated March 20, 1978, in so far as it relates to the assessment years 1970-71 and 1971-72, and restore the disclosure application for these years to the file of the Commissioner and direct him to decide the same in accordance with law. Parties will bear their own costs.