
(1980) 01 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 436 of 1976

Dr. Paramjit Singh Grewal

APPELLANT

Vs

Commissioner of Income Tax and Another

RESPONDENT

Date of Decision : 01-01-1980

Acts Referred:

Income Tax Act, 1961 — Section 139(1), 139(2), 147, 148, 271(1)

Citation : (1980) 18 CTR 98 : (1980) 125 ITR 549

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Advocate : Bhagirath Dass and S.K. Hirajee and B.K. Gupta, for the Appellant;
D.N. Awasthy and B.K. Jhingan, for the Respondent

Judgement

Rajendra Nath Mittal, J.—Briefly, the case of the petitioner is that he is an assessee under the I.T. Act and was being assessed by the ITO, District II(V), Amritsar, respondent No. 2. For the assessment years 1970-71 and 1971-72, the due dates for filing the returns u/s 139(1) of the I.T. Act, 1961 (hereinafter referred to as " the Act "), were September 30, 1970, and September 30, 1971, respectively. He, prior to the issue of notices u/s 139(2) of the Act, voluntarily filed the returns of his income for the aforesaid assessment years on October 23, 1972. On the same date, he filed an application before the Commissioner, Amritsar, respondent No. 1, u/s 271(4A) of the Act for waiving the minimum imposable penalty which could be imposed u/s 271(1)(a) read with Section 271(1)(a)(i) of the Act on the ground that he had filed the returns in good faith without any notice having been issued to him u/s 139(2) or Section 147 read with Section 148 and that he had co-operated with the department fully. It was further stated that he had complied with the conditions provided in Section 271(4A) and, therefore, the penalty which was imposable for late filing of the returns be waived.

2. Respondent No. 1 rejected the application, vide order dated June 2, 1975, on the ground that the petitioner had been assessed to tax for a number of years

prior to the assessment years in question and by submitting the returns u/s 139(1) after the due date, the assessee could not be considered to have made any disclosure in terms of Section 271(4A) of the Act. The provision was applicable only to a case where the income would have escaped assessment but for a disclosure made by the assessee. It was further added that the filing of the returns was, therefore, not an act of disclosure, much less a voluntary disclosure. The order has been challenged through this writ petition on the ground that respondent No. 1 has taken irrelevant matters into consideration while deciding the application u/s 271(4A) of the Act.

3. It is contended by the learned counsel for the petitioner that respondent No. 1 has taken into consideration irrelevant matter, namely, that the petitioner had been an assessee for a number of years prior to the assessment years in question and, therefore, he was not entitled to the benefit of Section 271(4A) of the Act. He strenuously argues that the aforesaid section does not contemplate that if a person is a prior assessee then he is not entitled to the benefit of Section 271(4A) of the Act.

4. I have heard the learned counsel and find force in his contention. In order to determine the question it will be proper to notice the provisions of Section 271(4A) of the Act which are as follows :

" Notwithstanding anything contained in Clause (i) or Clause (iii) of Sub-section (1), the Commissioner may, in his discretion-

(i) reduce or waive the amount of minimum penalty imposable on a person under Clause (i) of Sub-section (1) for failure, without reasonable cause, to furnish the return of total income which such person was required to furnish under Sub-section (1) of Section 139, or

(ii)if he is satisfied that such person-

(a) in the case referred to in Clause (i) of this sub-section has, prior to the issue of notice to him under Sub-section (2) of Section 139, voluntarily and in good faith, made full disclosure of his income ; and in the case referred to in Clause (ii) of this sub-section has, prior to the detection by the Income Tax Officer, of the concealment of particulars of income in respect of which the penalty is imposable, 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 ;

(b) has co-operated in any enquiry relating to the assessment of such income, and

(c) has either paid or made satisfactory arrangements for payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assessment year....."

5. It is not disputed that in the present case the penalty can be imposed on the

petitioner under Clause (i) of Sub-section (1) and not under Clause (iii) of that sub-section. It is evident from a reading of the section that the penalty imposable on an assessee can be waived in the cases referred to in Clause (i), if the Commissioner is satisfied, firstly; that he has voluntarily and in good faith made full disclosure of his income prior to the issue of notice to him under Sub-section (2) of Section 139, secondly, that he co-operates in an enquiry relating to the assessment of such income, and, thirdly, has either paid or made satisfactory arrangement for payment of tax or interest payable in consequence of an order passed under the Act in respect of the relevant assessment year. The Act nowhere provides that if the person concerned is an assessee in the previous years and had been submitting returns, he is not entitled to the benefit of that section. If that had been the intention of the Legislature, it could have specifically said so in the Act. It is a settled proposition of law that the provisions of a taxing statute have to be construed strictly. If the person making an application under this section fulfils the aforesaid requirements the Commissioner has to decide the question of waiving the imposition of penalty on merits in each case.

6. A similar question under the W.T. Act arose before the Jammu and Kashmir High Court in Ghulam Mohd. Sheikh v. CWT [1977] 109 ITR 395 ; [1977] Tax LR 945. The learned judge, after noticing the relevant sections, observed as follows (vide headnote of 1977 TLR 945 :

" Where a person files the return voluntarily u/s 14(1) of the Act, it matters little whether he is filing the return for the first time or not so as to be entitled to receive the benefit u/s 18(2A) of the Act...The legislature in its supreme wisdom did not create any classification of " existing assesseees " and " fresh assesseees " under Clause (i) of Section 18(2A) and provided for giving of benefit to "old assesseees" who file returns u/s 14(1) of the Act if the conditions given in Clauses (a), (b) and (c) were satisfied. The authorities are, therefore, not justified in refusing to consider the petition filed by the assessee u/s 18(2A) on merits on the ground that the said provisions were not attracted to cases of existing assesseees."

7. It may be stated that the provisions of Section 18(2A) of the W.T. Act are similar to those of Section 271(4A) of the Act. I am in respectful agreement with the aforesaid view. I also get support from a decision of the Mysore High Court in S. Sannaiah Vs. Commissioner of Income Tax, Mysore and Another, . In that case the petitioner-assessee voluntarily submitted his returns for the assessment years 1965-66 to 1969-70. On the said returns, the ITO passed assessment orders on November 20, 1969, and on the same day issued notices to the petitioner u/s 271(1) of the Act to show cause why penalty should not be imposed. The petitioner made an application to the Commissioner for waiving the penalty u/s 271(4A) of the Act which was rejected on the ground that the conditions for invoking his discretion under that section had not been satisfied. The petitioner filed a writ petition challenging the order of the Commissioner. It

was held that if the conditions in Clauses (a), (b) and (c) of Section 271(4A) of the Act were satisfied, the Commissioner could not refuse to reduce or waive the amount of minimum penalty imposable.

8. After taking into consideration all the aforesaid circumstances, I am of the opinion that the Commissioner has taken into consideration irrelevant matter, i.e., that the petitioner was assessed to tax for a number of years prior to the assessment year in question and by submitting the returns u/s 139(1) of the Act after the due date he cannot be considered to have made any disclosure in terms of Section 271(4A) of the Act, and, therefore, his order is liable to be quashed. He may, however, consider the matter afresh after taking notice of the relevant considerations as provided in Section 271(4A) of the Act.

8. For the aforesaid reasons, I accept the writ petition with costs and quash the impugned order. Counsel fee Rs. 200.