
(1990) 09 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 781 of 1990

Hari Sharan Sarraf

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 06-09-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 271(1), 273(1), 273A

Citation : (1991) 92 CTR 225 : (1990) 88 CTR 207 : (1991) 188 ITR 60 : (1991) 55 TAXMAN 264

Hon'ble Judges : B.P. Jeevan Reddy, C.J.;S.C. Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Jeevan Reddy, C.J.—By this writ petition, the assessee is questioning the validity of an order passed by the Commissioner of Income Tax, Lucknow, on March 17, 1990, on a petition filed by the assessee u/s 273A of the Income Tax Act, 1961.

2. The assessee is an individual. A raid u/s 132(1) of the Act was conducted at his business and residential premises on January 31, 1985. Taking advantage of Explanation 2 appended to Sub-section (1) of Section 273A by the Taxation Laws (Amendment) Act, 1984, with effect from October 1, 1984 (which was omitted by the finance Act, 1985, with effect from May 24, 1985), the petitioner purported to make a disclosure of his concealed unaccounted income before the Commissioner within 15 days of the said raid. He submitted revised returns within the said period in respect of the assessment years 1976-77 to 1985-86. Having filed the said returns, the petitioner applied to the Commissioner u/s 273A to waive the penalties imposed upon him and placed strong reliance upon Explanation 2 aforesaid. This argument was rejected by the Commissioner by his order dated 17-3-1990, in the following words :

"I think that the assessee had no doubt made a disclosure of his income to the

Commissioner on February 12, 1985, which is within 15 days of the seizure. However, it is not enough to make a disclosure and it is further necessary that the disclosure should be "full and true". In this case, the assets were discovered during search on January 31, 1985. There is a presumption in law that possession is evidence of ownership . . . Further, when the assessee is found to be the owner of unexplained money, etc., they are deemed to be their income of the financial year in which they were found as per Section 69A of the Income Tax Act, 1961. Thus, the income will be taxable in the assessment year 1985-86, unless the assessee leads satisfactory evidence to show that it was actually earned in earlier years ... In the circumstances, I hold that the claim does not dislodge the presumption u/s 132(4A) and u/s 69A of the Income Tax Act, 1961, and, therefore, the disclosure is not full and true. The condition laid down in Section 273A(1) relating to penalty u/s 271(1)(c) is not, therefore, satisfied."

3. It is, however, not clear from the order of the Commissioner as to whether the revised returns filed by the petitioner for the assessment years 1975-77 to 1985-86 were finally accepted by the assessing authorities or not. The petitioner's application u/s 273A of course proceeds on the assumption that they were so accepted.

4. If the revised returns were finally accepted as filed by the petitioner, there may not be any room for holding that the petitioner had not made a full and true disclosure of his income within the meaning of the said explanation. But, if the revised returns are not accepted and all the disputed income is included in one assessment year, i.e., 1985-86, there is no room for any argument of a full and true disclosure by the assessee.

5. Moreover, it is necessary to clarify a certain aspect in this case. The petitioner applied for waiver of three types of amounts, namely, penalties imposed u/s 271(1)(c), penalties imposed u/s 273(1)(b) and the interest charged u/s 217. Explanation 2 to Sub-section (1) of Section 273A of the Act applies only to penalties levied u/s 271(1)(c), and not to penalties imposed under other provisions, much less to interest charged u/s 217 or for that matter under any other provision. This is evident from a reading of Explanation 2, which, as stated above, was introduced by the Taxation Laws (Amendment) Act, 1984, with effect from October 1, 1984, and omitted by the Finance Act, 1985, with effect from May 24, 1985 :

"Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing belonging to a person are seized u/s 132 and within fifteen days of such seizure, the person makes a full and true disclosure of his income to the Commissioner, such person shall, for the purposes of Clause (b) of this sub-section, be deemed to have made, 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, a disclosure of such particulars."

6. According to the Explanation "full and true disclosure of his income" by the assessee within 15 days of the search and seizure shall be deemed to have been made prior to the detection by the Income Tax Officer for the purposes of Clause (b) of the said sub-section. Clause (b) of Sub-section (1) refers to Clause (ii) which Clause (ii) in turn refers to Clause (iii) of Sub-section (1) of Section 271. It is thus clear that the said Explanation has no application to penalties or interest imposed under any provision other than Section 271(1)(c). In the circumstances, we are of the opinion that the matter must go back to the Commissioner for reconsideration in the light of the position of law explained hereinbefore.

7. There is yet another reason for remitting the matter to the Commissioner referred to hereinbefore. In paragraph 4.2 of his order, the Commissioner has stated that the revised returns filed by the petitioner for the aforesaid assessment years were accepted by the Income Tax Officer, but they were only protective assessments and cannot be taken to be a finding of the Assessing Officer that the disclosure is full and true. It is not clear whether ultimately the revised Returns filed by the petitioner were accepted or not. That fact will have to be verified by the Commissioner.

8. In the result, the impugned order of the Commissioner of Income Tax, Lucknow, dated March 17, 1990, is set aside and the matter is remitted to him for fresh disposal of the application filed by the petitioner u/s 273A of the Income Tax Act in accordance with law and in the light of the observations made hereinabove. There shall be no order as to costs.