

(1979) 07 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Petition No"s. 791 and 1392 of 1973

Indra and Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 02-07-1979

Acts Referred:

Income Tax Act, 1961 — Section 271(1), 271(4A), 273A

Citation : (1980) 122 ITR 510 : (1979) RLW 410 : (1979) WLN 266

Hon'ble Judges : C.M. Lodha, C.J.;M.C. Jain, J

Bench : Division Bench

Advocate : H.M. Parekh, for the Appellant; L.R. Mehta, for the Respondent

Judgement

Lodha, C.J.—These are two connected writ petitions which can be conveniently disposed of by a single order. The petitioner in both the cases is the same, i.e., Messrs. Indra and Company, a registered firm carrying on business in iron and steel. Writ petition No. 791 of 1973 pertains to the assessment year 1962-63 whereas Writ Petition No. 1392 of 1973 is with respect to the assessment year 1960-61. The ITO imposed penalty on the petitioner for both the years for not filing the return within time.

2. We may take up the facts of Writ Petition No. 791 of 1973. The assessee did not file the return of its income for the assessment year 1961-62 within the time specified in the notice u/s 22(1) of the Indian I.T. Act of 1922. A notice was accordingly served on it, u/s 22(2) on May, 1961. It should have filed the return by July 4, 1961, but it actually filed it on December 28, 1962, after a delay of more than 17 months. The assessment was completed on April 19, 1963, and a notice was issued to the assessee on the same day calling upon it to show cause why a penalty should not be levied u/s 271(1)(a) of the I.T. Act, 1961. The ITO was not satisfied that the assessee had any reasonable cause for not filing the return by July 4, 1961, and accordingly, he levied a penalty of Rs. 12,336 u/s 271(1)(a)(i) of the Act of 1961, by his order dated April 8, 1964. The assessee appealed to the AAC, who dismissed the appeal. The assessee then filed an

appeal to the Appellate Tribunal which reduced the penalty to Rs. 5,000. Aggrieved by the order of the Appellate Tribunal, the assessee as well as the revenue got a reference made to this court on certain questions of law. This court by its order dated February 9, 1972, in I.T. Reference No. 7 of 1969, held that the Income Tax Appellate Tribunal could not have reduced the penalty below the minimum prescribed by Section 271(1)(a)(i) of the Act. In this view of the matter the order of the Income Tax Appellate Tribunal was quashed.

3. Thereafter, Sub-Sections (4A) and (4B) were inserted in Section 271 by the I.T. (Amend.) Act, 1965, with effect from March 12, 1965. Consequently, the petitioner filed an application u/s 271(4A) of the Act before the Commissioner, Rajasthan, Jaipur, praying that the amount of the penalty may be waived or suitably reduced. However, the Commissioner, by his order dated January 27/29, 1973, (Ex. 1), refused to entertain the application on the ground that the penalty had been imposed prior to the coming into force of Section 271(4A) of the Act.

4. Aggrieved by the aforesaid order, Ex. 1, the petitioner has filed this writ petition under art, 226 of the Constitution praying that the order, Ex. 1, be quashed and the CIT be directed to entertain the petitioner's application u/s 271(4A) of the Act and dispose of it according to law.

5. We do not consider it necessary to narrate in detail the facts giving rise to Petition No. 1392 of 1973, as the facts are almost the same except that the assessment year and the amount of penalty are different.

6. The short point involved in these cases is, whether the Commissioner has no power to entertain a prayer for reduction of penalty imposed in respect of the period prior to the coming into force of Sub-section (4A) of Section 271 of the Act, i.e., before March 12, 1965.. Sub-section (4A) of Section 271 reads as under :

" (4A) 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) reduce or waive the amount of minimum penalty imposable on a person under clause (iii) of Sub-section (1), 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 :

Provided that if in a case the minimum penalty imposable under clause (i) or, as the case may be, clause (iii) of Sub-section (1) in respect of the relevant assessment year, or where such disclosure relates to more than one assessment year, the aggregate of the minimum penalty imposable in respect of those years, exceeds a sum of rupees fifty thousand, no order reducing or waiving the penalty shall be made by the Commissioner unless the previous approval of the Board has been obtained."

7. Even Sub-section (4A) was omitted by the Taxation Laws (Amendment) Act, 1975, with effect from October 1, 1975, and a new Section 273A was inserted by the Finance Act of 1978, with effect from June 1, 1978. We may also usefully reproduce the relevant portion of Section 273A :

" 273A. Power to reduce or waive penalty, etc., in certain cases.--(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,....."

8. In the old Section 271(4A), the words used in this context were "penalty imposable""; even then it would not be correct to assume that the Commissioner's power u/s 271(4A) could be invoked by the assessee only before penalty was imposed upon him and not after any penalty was actually imposed. The word " reduce " in the section also : gives a clue that the Commissioner could not reduce the penalty which is likely to be imposed or which may not be imposed at all. Consequently, the word "imposable " has to be given a wider import. In this view of the matter, under old Section 271(4A), the Commissioner had jurisdiction to grant relief in respect of penalty already imposed prior to the insertion of Section 271(4A).

9. In *Fairdeal Motors and Smt. Shama Mir Vs. Commissioner of Income Tax*, it

was observed that though Section 271(4A) came into force in 1965, after the close of the assessment year 1964-65, the section will still apply to assessment year 1964-65 because the amendment being a beneficial provision in a procedural law, will apply to the proceedings pending at the time the section came into force.

10. It is significant to point out that the Amending Act of 1978 has deleted the existing Sub-Sections (4A) and (4B) of Section 271 of the Act relating to the powers of the Commissioner to reduce or waive penalty in certain cases and re-enacted this provision with several modifications in the new Section 273A. We are not concerned with the other points of difference, but one of the main points of difference between Section 271(4A) and the new Section 273A is that under the new section, the Commissioner will have powers to reduce or waive the penalty even after such penalty has been imposed or levied. The object of the Legislature in introducing Section 273A clearly appears to be to give substantial concession to the assessee and, therefore, it must be construed liberally in favour of the subject. It appears to us that whatever doubt may have been entertained prior to the introduction of Section 273A, the position now u/s 273A is that the Commissioner has been empowered to waive or reduce the amount of penalty even for previous years. No period of limitation for making an application for waiver or reduction was prescribed under the old law nor is there any limitation for such an application under the new law. Such applications can be made also after confirmation of penalty order by the appellate authorities. Hence, we are of the opinion that the CIT has jurisdiction to entertain an application, to waive or reduce the amount of penalty even in respect of years prior to the introduction of Section 273A.

11. Accordingly, we allow both the writ petitions, set aside the impugned orders passed by the CIT and hereby direct him to, dispose of the applications made by the assessee for reducing or waiving the amount of penalty, as the case may be, according to law. There will, however, be no order as to costs.