

**(2000) 12 MAD CK 0115**

**In the Madras High Court**

**Case No :** Write Petition No. 14343 of 1993 8 December 2000

Kalakrithi

APPELLANT

Vs

ITO and Another

RESPONDENT

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**Date of Decision :** 08-12-2000

**Acts Referred:**

**Citation :** (2002) 253 ITR 754

**Hon'ble Judges :** R. Jayasimha Babu, J

**Bench :** Division Bench

**Advocate :** K. Mani for M/s. Anitha Sumanth, for the Assessee Mrs. Chitra Venkataraman, for the Revenue, for the Appellant;

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## **Judgement**

R. Jayasimha Babu J.

Counsel contends that the power of the Commissioner must be exercised either wholly in favour of the assessee, or wholly against him when a

relief sought by the assessee u/s 273B of the Income Tax Act, 1961, is in respect of a penalty levied u/s 272A, sub-section (2), clause (c) of the

Act.

Under section 272A of the Act, a person, who, inter alia, fails to furnish the returns or statements mentioned in that section will be liable to pay by

way of penalty at a rate of, as that section stood in the year 1990, a sum of not less than Rs. 100 and not more than Rs. 200 for every day during

which the failure continued.

Admittedly, the petitioner, which is a partnership firm engaged in the production of films, was required to file the return u/s 285B of the Act in

Form No. 52A within 30 days from the date of completion of the production of the film, or 30 days from the end of the financial year in which the

production was completed. The assessee produced three films, the first Jeevan Chakra was completed on 22-12-1985 the second Karunamayee

on 26-4-1987 and the third Jananayaka on 3-7-1988. The requisite return, however, was filed only in October, 1989, after the Income Tax

Officer had issued a -show-cause notice to the petitioner for their failure to file the returns.

For the period of the delay in filing the return, penalty was imposed by the Income Tax Officer in the sum of Rs. 1,96,290. On a petition being filed

by the petitioner before the Commissioner, the penalty was reduced by 50 per cent. The Commissioner's jurisdiction was invoked u/s 264 of the

Act. The assessment years were 1986-87, 1987-88 and 1988-89.

The Commissioner held that the assessee had failed to file the statements within the time allowed by law, and the statements were, in fact, filed only

after service of show-cause notice u/s 272A(2) read with section 285B of the Act. He held that :

The assessee's explanation that the partners were technicians who were not aware of the Income Tax formalities and that therefore they could not

attend to this matter is not convincing. However, having regard to the fact that one of the partners, Shri H. R. Bhargav, was not keeping good

health and other circumstances, I consider it just and fair to reduce the amount of penalty by 50 per cent. of what has been levied originally"".

Accordingly, he reduced the penalty to Rs. 98,145.

Learned counsel for the petitioner submitted that the Commissioner has acted contrary to law in directing the assessee to pay penalty in an amount,

which was one-half of the amount that had been levied by the Income Tax Officer. Counsel referred to section 273B of the Act, the marginal

heading of which reads ""penalty not to be imposed in certain cases"". It, inter alia, provides that no penalty shall be imposable for any failure, inter

alia, to comply with section 272A(2)(c) if the assessee proves that there was reasonable cause for the failure to comply. Counsel contends that the

words used in the section imply that if some cause is shown, and that cause even if found to be a reasonable cause to explain only a part of the

delay, no penalty would be leviable.

The words ""reasonable cause"" in the section must necessarily have a relation to the failure on the part of the assessee to comply with the

requirement of the law which he had failed to comply with. In case of delay in compliance, the cause shown must be for the whole of the period of the delay and not merely for a part thereof. If the cause shown is such as to explain the delay as a whole and constitutes" a good reason for the non-compliance, no penalty would be leviable. However, in cases where the cause shown is such as to explain a part of the delay, or the cause shown is only to mitigate the gravity of the non-compliance, such a cause cannot be extrapolated and treated as being a good cause for the whole of the period of the delay in its entirety. All or nothing the proposition canvassed by the petitioner would be detrimental to assessees themselves if the choice placed before the Commissioner in all cases were to be that he should set aside all penalties the moment he finds that there is a cause, though not fully satisfactory but which may be accepted in part which may justify a grant of a partial relief. If the Commissioner were to be compelled to grant relief in whole even where the cause shown is not such as to explain in full the delay or the gravity of the non-compliance, the Commissioner would be compelled to reject and deny all relief. A construction which would preserve the exercise of the power in favour of the assessee in circumstances which warrant it is to be preferred to a construction which would result in the likelihood of denial of relief. Counsel in support of his submission invited the attention to the decision of the Bench of this court in the case of Additional Commissioner of Income Tax Vs. P. Nammalvar Naidu and Sons, . In that case, it was found that the Commissioner had made no order at all. Even in the absence of such an order the Tribunal had reduced the amount of the penalty to a level below the minimum prescribed. That was held to be bad. That decision does not advance the case of the petitioner. I therefore, do not see any merit in the writ petition and the same is dismissed. No costs.