
(1975) 08 GAU CK 0001
In the Gauhati High Court
Case No : Income-tax Reference No. 7 of 1973

K.B. Stores

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 11-08-1975

Acts Referred:

Income Tax Act, 1961 — Section 139(8), 246

Citation : (1976) 103 ITR 505

Hon'ble Judges : M.C. Pathak, C.J.;B.N. Sharma, J

Bench : Division Bench

Advocate : S. Bhattacharya, P. Choudhuri and R.L. Rara, for the Appellant; G.K. Talukdar and D.K. Talukdar, for the Respondent

Judgement

Pathak, C.J.—The following question of law has been referred in this reference by the Income Tax Appellate Tribunal, Gauhati:

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that no appeal lies before the Appellate Assistant Commissioner against the charge of interest under Section 139 ?"

2. The assessee is a firm and in respect of the assessment year 1965-66, a return of income was filed on September 16, 1965. Later on it was found that this return had not been signed by a partner of the firm but had been signed, by an employee, who is the manager of the firm. Thereafter, a valid return was filed on December 19, 1968, and the assessment was completed on July 17, 1969. While completing the assessment the Income Tax Officer charged interest under the provisions of Section 139 as according to him the return had not been filed within the time allowed u/s 139(1) of the Income Tax Act, 1961, hereinafter referred to as "the Act". The Income Tax Officer treated the first return as no return and accordingly he charged the interest up to the date of filing the proper return. The amount of interest charged came to Rs. 34,059, The assessee filed an appeal against the charging of this interest before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that the charging of

interest was actually penalty and unless it was proved that there was a wilful default or a deliberate mistake, no interest could have been charged. The Appellate Assistant Commissioner found that there was no, wilful default involved in this case and that it was a case of mistake and, therefore, interest should not have been charged. The Appellate Assistant Commissioner remitted the interest charged by the Income Tax Officer. The Appellate Assistant Commissioner granted relief to the assessee on some other ground.

3. Thereafter, the department appealed before the Income Tax Appellate Tribunal. The main ground was that the Appellate Assistant Commissioner was not justified in considering the appeal before him to be competent as there was no appeal provided against charging of interest u/s 139 for delay in filing of the return. The Tribunal held that the Appellate Assistant Commissioner was not justified in treating the appeal as competent and deciding the same. Accordingly, the Tribunal allowed the department's appeal and dismissed the cross-objection filed by the assessee.

4. The learned counsel for the assessee submits that levy of interest u/s 139 is a part of the assessment proceeding and, therefore, an appeal lies u/s 246(c) of the Act which reads as follows:

"246. Appealable orders.--Any assessee aggrieved by any of the following orders of an Income Tax Officer may appeal to the Appellate Assistant Commissioner against such order--.....

(c) an order against the assessee, where the assessee denies his liability to be assessed under this Act or any order of assessment under subsection (3) of Section 143 or Section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined or to the amount of loss computed, or to the status under which he is assessed."

5. In the instant case the assessment has been made u/s 143(3) of the Act. The total income assessed is Rs. 4,43,980 and the interest has been calculated at Rs. 34,059.

6. The appeal in the instant case is against the order of levying interest. Sub-clause (c) of Section 246 does not provide for any appeal against the order of levying interest.

7. If an assessee does not submit a return within the prescribed time or extended time, as the case may be, he is liable to pay interest as provided under Sub-section (8) of Section 139 of the Act. The assessee is liable to pay interest on the amount of tax assessed if he does not furnish a return as required under the law. The liability to pay interest arises for non-furnishing of the return within the prescribed period or within the time extended. Interest is not tax assessed under the Act. It is an adjunct to the tax assessed. Under Clause (c) of Section 246 appeal is provided against an assessment order and on a plain reading of the section we find that no appeal is contemplated against the levy of interest which

follows in accordance with Section 139 of the Act, In this connection we find that no separate order for interest is necessary. When the tax is assessed and if there has been non-submission of return within the prescribed period or within the extended time, the interest only has to be calculated as provided under Sub-section (8) of Section 139 of the Act. In this connection, we may notice Sections 215 and 216 of the Act. Section 215 deals with interest payable by an assessee. Section 216 deals with interest payable by an assessee in the case of under-estimate, etc. Under Clause (m) of Section 246, an order u/s 216 is appealable but no appeal is provided under any order u/s 215. Similarly, there is question of payment of interest u/s 201 and under Clause (1) of Section 246, an order u/s 201 is appealable. There is no provision for appeal u/s 246 against any levy of interest u/s 139 also.

8. It may be noted that though no appeal is provided against the levy of interest u/s 139, the proviso to Sub-section (8) of Section 139 reads as follows :

"Provided that the Income Tax Officer may, in such cases and under such circumstances as may be prescribed, reduce or waive the interest payable by any assessee under this sub-section."

9. Similarly, no appeal is provided against levy of interest u/s 215 but Sub-section (4) of Section 215 reads as follows :

"In such cases and under such circumstances as may be prescribed, the Income Tax Officer may reduce or waive the interest payable by the assessee under this section."

10. But appeal has been provided against an order u/s 201 which also deals with interest but no such power of reducing or waiving the interest is vested in the Income Tax Officer in Section 201. Similarly, appeal has been provided against an order u/s 216 which also deals with interest and in that section also there is no provision empowering the Income Tax Officer to reduce or waive the interest. Section 217 also deals with interest payable by assessee under certain circumstances and no appeal is provided in Section 246 against an order u/s 217 but Sub-section (2) of Section 217 provides as follows:

"The provisions of Sub-sections (2), (3) and (4) of Section 215 shall apply to interest payable under this section as they apply to interest payable under that section."

11. On a comparative study of the above provisions of the Act it is quite clear that Section 246(c) does not provide for any appeal against the levy of interest in accordance with the provisions of Section 139. That being the position, we hold that no appeal lies to the Appellate Assistant Commissioner against the charging of interest u/s 139 of the Act. Accordingly, we answer the question of law referred in the affirmative and against the assessee.

12. The reference is answered accordingly. We, however, make no order as to costs.

B.N. Sarma, J.

I agree.