(1986) 08 KL CK 0011

In the High Court Of Kerala

Case No : O.P. No''s. 1550 and 1552 of 1981

KESARIA TEA CO. LTD. APPELLANT

Vs

Income Tax OFFICER AND ANOTHER. RESPONDENT

Date of Decision : 28-08-1986

Acts Referred:
Income Tax Act, 1961 — Section 139, 215, 264

Citation : (1988) 171 ITR 479

Hon'ble Judges : K.S. Paripoornan, J;K. S. Paripooranan, J

Bench : Division Bench

Judgement

K. S. PARIPOORNAN J. - In these original petitions, the challenge is against the order passed by the Commissioner of Income Tax u/s 264 of the Income Tax Act, 1961, for the years 1978-79 and 1979-80. It is exhibit P-4 in O.P. No. 1550 of 1981 dated February 4, 1981. Interest was levied for the above two years by the Income Tax Officer u/s 139(8) of the Income Tax Act and also u/s 215 of the Act. It is common ground that the interest levied u/s 139 of the Act can be waived or reduced by the Income Tax Officer himself under rule 117A of the Income Tax Rules, 1962, and the interest levied u/s 215 of the Act can also be waived or reduced under rule 40 of the Income Tax Rules.

In a recent decision in Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income Tax, the Supreme Court has held that the assessee should apply to the concerned Income Tax Officer for reduction or waiver of interest in the first instance and it is only thereafter that a revision will lie before the Commissioner of Income Tax impugning the levy of interest under sections 139(8) and 215 of the Act. Admittedly, in these two cases, no petition was filed before the concerned Income Tax Officer for waiver or reduction of interest levied under sections 139(8) and 215 of the Act. In such circumstances, in the light of the decision of the Supreme Court in Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income Tax, , it is not proper for this court to examine the legality on validity of the order passed by the Commissioner of Income Tax dated

February 4, 1981, for the above two years. All the same, we are of the view that the assessee should be given a chance to ventilate its grievances.

So, we direct that if the petitioner-assessee files appropriate petitions before the concerned Income Tax Officer within one month from today for waiver or reduction of interest, the said petition will be considered and disposed of on merits unhampered by any observations or findings contained in the order of the Commissioner of Income Tax dated February 4, 1981. The assessee will also be entitled to be heard before final orders are passed in the petitions filed by it for waiver and/or reduction of interest.

The original petitions are disposed of with the above observations. There shall be no order as to costs.