

(1978) 11 KL CK 0017
In the High Court Of Kerala
Case No : O.P. No. 2552 of 1975

Koipally Brothers

APPELLANT

Vs

Income Tax Officer, A-Ward and Another

RESPONDENT

Date of Decision : 15-11-1978

Acts Referred:

Income Tax Act, 1961 — Section 139(1), 139(2), 139(4)

Citation : (1979) 119 ITR 931

Hon'ble Judges : P. Subramonian Poti, J

Bench : Single Bench

Advocate : C.T. Peter, T.C. Karunakaran, V.M. Kurian, A.I. Mohammed Basheer, K.K. Gangadharan and E.M. Sadrul Anam, for the Appellant; P.A. Francis and P.K. Raveendranatha Menon, for the Respondent

Judgement

Subramonian Poti, J.—In the case of a person who has not furnished the return within the time allowed to him under Sub-section (1) or Sub-section (2) of Section 139 of the I.T. Act, 1961, if he furnished the return subsequently before the end of the period specified in Clause (b) of Section 139(4) of the I.T. Act, is he liable to pay the interest contemplated by Clause (iii) of the proviso to Sub-section (1) of Section 139 of the Act ? This is the question that arises for decision in this case. On this question, different views have been expressed by the High Courts in India.

2. The petitioner in this case is a firm. It is an assessee to Income Tax. The petitioner filed its return of income for the assessment year 1968-69 only on June 28, 1969, though it was due on June 30, 1968, That there was delay in filing the return was not noticed at the time of assessment for the assessment year 1968-69. Later, it was noticed by the CIT who took up suo motu revision. He held that the assessment was erroneous in so far as the assessing authority had failed to levy interest u/s 139 of the Act, and, therefore, the matter was remitted to the ITO to enable him to deal with the case in regard to the levy of interest. Pursuant to this, the ITO passed Ex. P-3 order on February 26, 1973, In

this he held that the return that ought to have been filed on June 30, 1968, was filed only on June 28, 1969, and there was no sufficient reason for the late filing of the return. Hence, he levied interest of Rs. 6,515 u/s 139(1)(iii) of the Act. The petitioner took up the matter in appeal before the AAC of Income Tax. The latter allowed the appeal. This was reversed by the Income Tax Appellate Tribunal, Cochin Bench, before whom the department took up the matter in further appeal. The reversal of the appeal was on the ground that the AAC had no jurisdiction to entertain the appeal against the levy of interest. The petitioner has challenged Ex. P-3 order before this court in these proceedings.

3. That the petitioner was bound to file the return u/s 139(1) in this case is not disputed. But he did not file the return. He also did not file the return u/s 139(2) of the Act. He filed the return within the period of 3 years contemplated u/s 139(4)(b)(ii) of the Act and that was without applying for any extension of time. In other words, the return was filed within the period specified in Clause (b) of Sub-section (4) of Section 139 and the assessee had not made any application to the officer earlier to extend the date for furnishing the return. Whether in such a case interest contemplated by Clause (iii) of the proviso to Sub-section (1) of Section 139 of the Act could be levied is the question which I have to deal with here. It is useful here to refer to Sub-section (4)(a) of Section 139 of the Act. That reads :

" (4)(a) Any person who has not furnished a return within the time allowed to him under Sub-section (1) or Sub-section (2) may, before the assessment is made, furnish the return for any previous year at any time before the end of the period specified in Clause (b), and the provisions of Clause (iii) of the proviso to Sub-section (1) shall apply in every such case."

4. It may also be necessary to refer to Section 139(1). That obliges every person, if his total income or the total income of any other person in respect of which he is assessable under the Act during the previous year exceeded the maximum amount which is not chargeable to Income Tax, to furnish a return of his income or the income of such other person, during the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed within the time specified in that Sub-section. The proviso to that Sub-section is relevant and I am quoting it here :

" Provided that, on an application made in the prescribed manner, the Income Tax Officer may, in his discretion, extend the date for furnishing the return-

(i) in the case of any person whose total income includes any income from business or profession the previous year in respect of which expired on or before the 31st day of December of the year immediately preceding the assessment year, and in the case of any person referred to in Clause (b), up to a period not extending beyond the 30th day of September of the assessment year without charging any interest ;

(ii) in the case of any person whose total income includes any income from

business or profession the previous year in respect of which expired after the 31st day of December of the year immediately preceding the assessment year, up to the 31st day of December of the assessment year without charging any interest ; and

(iii) up to any period falling beyond the dates mentioned in Clauses (i) and (ii), in which case, interest at nine per cent, per annum shall be payable from the 1st day of October or the 1st day of January, as the case may be, of the assessment year to the date of the furnishing of the return-

(a) in the case of a registered firm or an unregistered firm which has been assessed under Clause (b) of Section 183, on the amount of tax which would have been payable if the firm had been assessed as an unregistered firm ; and

(b) in any other case, on the amount of tax payable on the total income/ reduced by the advance tax, if any, paid or by any tax deducted at source, as the case may be."

5. It is, therefore, evident that obligation to file return within the time specified u/s 139(1) is subject to an extension of the date, which extension is to be made by the ITO on an application made to him. Clauses (i) and (ii) deal with cases where the ITO is free to waive the interest whereas Clause (iii) deals with cases where he is obliged to charge interest. That is in cases where the period of extension falls beyond the dates mentioned in Clauses (i) and (ii). The proviso read in the context of Sub-section (1) of Section 139 applies plainly to cases where there is an application for extension of time to file the return and that is granted by the ITO. Since Section 139(4)(a) refers to application of the provisions of Clause (iii) of the proviso to Sub-section (1) to the case of any person who does not fall within Sub-sections (1) and (2) of Section 139 and who furnishes the return within the period specified in Clause (b) of Section 139(4), it can refer only to a case where there is non-compliance by a person with Sub-sections (1) and (2). That would be the case where there is neither filing of return within the period mentioned in Sub-section (1) of Section 139 or within the time mentioned in the notice served u/s 139(2), but within the longer time contemplated u/s 139(4)(a) a return is voluntarily submitted by a person. In such a case, there is no question of his seeking extension of time for filing the return. To say that because of the reference to Clause (iii) of Section 139(1), proviso, the levy of interest u/s 139(4) (a) can be only in cases where there is an application for extension of time to file return would be to render the provision in Sub-section (4)(a), in so far as it concerns the application of Sub-clause (iii) of Sub-section (1) of Section 139, inoperative and otiose. No legislative piece is to be read and understood in that manner if it is capable of a construction giving effect to every part of it. In the context and scheme of the provision in Section 139 it cannot be that while interest is levied in respect of delayed returns under Sub-sections (1) and (2) where there is an extension on an application by the assessee, no interest is levied where the return is filed after a longer period and the assessee does not even apply for an extension. Logically in such a case also interest must be due.

Evidently, the purpose and object of the clauses in Sub-section (4)(a) adverted to is to see that such interest is leviable in such a case. That is not disputed. In fact, even the decisions which take the view in favour of the assessee on the interpretation of this section have not held that this is not the object of the section. But the question is only whether this object is defeated by the language in the section. To read the words " the provisions of Clause (iii) of the proviso to Sub-section (1) shall apply in Sub- Section 4(a) of Section 139 as enabling such application of that Sub-clause only if there is an application made in the prescribed manner to the ITO to extend the time for furnishing the return would, as I have already indicated in effect, be to hold that no interest would be leviable in the case of voluntary belated return, belated in the sense though it is filed within the time contemplated by Sub-section (4)(a) of Section 139 of the Act, that is, filed beyond the period specified in Sub-sections (1) and (2) of Section 139. There is no compelling need to read the section in that manner. Without difficulty the clause could be plainly understood as enabling the levy of interest in the manner contemplated in Clause (iii) of the proviso to Sub-section (1) of Section 139. In other words, Sub-section (4)(a) could be read and understood thus : "Any person who has not furnished the return within the time allowed to him under Sub-section (1) or Sub-section (2) may, before the assessment is made, furnish a return for any previous year at any time before the end of the period specified in Clause (b), and in such a case interest at nine per cent, per annum shall be payable from the first day of October or the 1st day of January, as the case may be, of the assessment year to the date of furnishing of the return (a) in the case of a registered firm or an unregistered firm which has been assessed under Clause (b) of Section 183, on the amount of tax which would have been payable if the firm had been assessed as an unregistered firm, and (b) in any other case, on the amount of tax payable on the total income reduced by the advance tax, if any, paid or by any tax deducted at source, as the case may be." Instead of writing this into Sub-section (4)(a), for the sake of convenience, Parliament has made reference to Clause (iii) to the proviso to Section 139(1) to indicate the application of the above-said clause.

6. The practice of construing statutes in a manner promoting the purpose and object of the Act and not too literally so as to defeat the purpose or render the provision meaningless arid otiose is a well-accepted rule of construction of statutes. In fact, I need not go into this question elaborately, for, this rule is so well established to need any discussion. I may only refer to the decision of the Full Bench of this court in *Kesavan Namboodiri v. State* [1976] KLT 427, where the principle of reading down the provisions of statute has been elaborately discussed by this court.

7. As indicated earlier conflicting views have been taken by various High Courts in India on this question. Before referring to them I may refer to an earlier unreported decision of this court on this question. That is in O.P. No. 4855 of 1972. In that decision I had occasion to consider this matter. In paras 5 and 6 of the judgment it was observed thus in that case :

" It is true that the petitioner had not made an application in the prescribed manner to extend the date for furnishing the return. But it is seen that he had voluntarily filed returns within the period provided under Clause (b) of Sub-section (4) of Section 139 of the Act. Therefore, the provisions of Section 139(4) (a) operate to apply the provisions of Clause (iii) of the proviso to Sub-section (1) of Section 139 to such a case and, therefore the order in so far as it levied penal interest under that section is valid.

6. Counsel relies on the decision of the Kishanlal Haricharan Vs. Income Tax Officer, A-Ward . There, of course, it was held that in cases where the assessee did not make an application to extend the time to file return there would be no question of levy of interest under Clause (iii) of the proviso to Sub-section (1) of Section 139 of the Income Tax Act. But evidently Sub-section (4)(a) of Section 139 was not noticed by the court as rightly held by the High Court of Mysore in Indian Telephone Industries Co-operative Society Ltd. Vs. Income Tax Officer, Special Survey Circle, Bangalore and Another, ."

8. The decision in Kishanlal Haricharan Vs. Income Tax Officer, A-Ward has recently been considered by a Full Bench of the Andhra Pradesh High Court in Income Tax OFFICER, J-WARD, CIRCLE-I, HYDERABAD DISTRICT Vs. SECUNDERABAD TIN INDUSTRIES., and the Full Bench has overruled its earlier decision holding that the provision in Section 139(4)(a) has not been noticed by the Division Bench in the earlier decision. No doubt I find that the Delhi High Court in Garg and Company Vs. Commissioner of Income Tax, , the Patna High Court in Commissioner of Income Tax Vs. Bahri Bros. (P.) Ltd., , the High Court of Jammu and Kashmir in Mulakh Raj Bimal Kumar Vs. Income Tax Officer and Others, and the Calcutta High Court in National Hotel and Dilkusha Cabin Vs. Income Tax Officer, "A" Ward and Another, seem to have taken the same view as the view of the earlier Division Bench of the Andhra Pradesh High Court. But I find that it is the plain language of Section 139(4) read with Section 139(1)(ii) that has been applied by the learned judges in these cases. That the consequence of reading it in that manner would be to render a part of the section ineffective or inoperative has evidently been not sufficiently appreciated by the learned judges. I am in respectful agreement with the views expressed by the Full Bench of the Andhra Pradesh High Court in Income Tax OFFICER, J-WARD, CIRCLE-I, HYDERABAD DISTRICT Vs. SECUNDERABAD TIN INDUSTRIES., , that of the Gauhati High Court in Ganesh Das Sreeram Vs. Income Tax Officer, "A" Ward and Others, , that of the Karnataka High Court in Indian Telephone Industries Co-operative Society Ltd. Vs. Income Tax Officer, Special Survey Circle, Bangalore and Another, , that of the Orissa High Court in Biswanath Ghosh Vs. Income Tax Officer, Ward B and Another, and that of the High Court of Gujarat in Chhotalal and Co. Vs. Income Tax Officer, Morvi and Others, .

9. In this view, I think that there is no reason to interfere with the order of the ITO. The levy of interest is not assailable. The original petition fails. It is dismissed. No costs.