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(2003) 05 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 4207 of 1986

Leader Engg. Works APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 14-05-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Income Tax Act, 1961 — Section 139, 139(8), 264(1), 271(1)(a)

Citation : (2004) 134 TAXMAN 257

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : S.C. Nagpal, for the Appellant; N.L. Sharma, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—In this writ petition under article 226/227 of the Constitution of India, the prayer is made for the issuance of a writ in the

nature of certiorari quashing the order dated March 6, 1981 (annexure P2), passed by respondent No. 1 and the order dated February 25, 1986,

of respondent No. 2 upholding the order of respondent No. 1 passed under rule 117A of the income tax Rules, 1962, read with section 139(8) of

the income tax Act, 1961 (hereinafter referred to as ""the Act""). The petitioner is a Registered firm under the Partnership Act as well as under the

income tax Act, 1961. Shri K.K. Sehgal through whom the present writ petition has been filed, is one of the partners of the firm. The dispute

relates to the assessment year 1974-75 and the previous year relevant to this assessment year is December 31, 1973. According to section 139 of

the Act, the return was to be filed on or before 30-6-1974. It was actually filed on 30-10-1974. The assessing authority imposed a penalty u/s

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271(1)(a) and interest u/s 139(8) of the Act amounting to Rs. 29,915. On February 28, 1977, the petitioner moved an application u/s 139(8) of

the Act for waiver of the interest. It was mentioned in the application that the accounts for the relevant period were received on or after October

19, 1974. Earlier there had been a strike in the establishment, which had commenced on April 29, 1974, and continued for about four months.

Consequently, the audit work was held up. The income tax Officer, respondent No. 1, did not accept the application. The default was held to be

without any reasonable cause. The petitioner filed a revision petition u/s 264(1) of the Act against the order of respondent No. 1. The revision

petition was also dismissed on February 25, 1986. A written statement has been filed on behalf of the respondent through respondent No. 2. In

paragraph 3, it is categorically stated that the penalty proceedings initiated u/s 271(1)(a) for late filing of the return were dropped by the income tax

Officer vide his order dated November 13, 1980.

2. Mr. Nagpal, learned counsel for the petitioner, has submitted that the period of delay in filing the return is the same for the purposes of interest

as well as penalty. The income tax Officer had the power under rule 117A(5) of the Act to waive the interest payable u/s 139 of the Act. The

explanation of the petitioner having been accepted for the purposes of imposition of penalty u/s 271(1)(a) could not have been disregarded while

deciding the question of waiver of interest with regard to late filing of the return.

3. On the other hand, learned counsel for the respondents, has submitted that the impugned orders are speaking orders. The petitioner had failed

to prove any evidence in spite of ample opportunities having been granted to the petitioner to justify the delay. Dropping of the penalty proceedings

initiated u/s 271(1)(a) is not a relevant factor for the purposes of waiver of interest.

4. I have considered the submissions made by learned counsel for the parties and have perused the paper book.

Rule 117A(3) of the income tax Rules, 1962, is as under:

The income tax Officer may reduce or waive the interest payable u/s 139 in the cases and in the circumstances mentioned below, namely:--

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(v) any case in which the assessee produces evidence to the satisfaction of the

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income tax Officer that he was prevented by sufficient cause from

furnishing the return within time.

5. A perusal of the aforesaid rule shows that the income tax Officer has the power to reduce or waive the interest on the assessee provided he

produces evidence to the satisfaction of the income tax Officer that he was prevented by sufficient cause from furnishing the return in time. The

explanation given by the petitioner with regard to the delay in filing of the return was accepted by the income tax Officer for dropping the penalty

proceedings. However, the same reasoning was not accepted for granting the relief to the petitioner of waiver of interest. It is not disputed that the

income tax Officer as well as the Commissioner of income tax exercise quasi-judicial functions. Therefore, the decision to drop the penalty

proceedings has to be supported by valid reasons.

6. Similarly, while exercising the discretion under rule 117A(5) of the income tax Rules, 1962, the income tax Officer cannot act arbitrarily. I,

therefore, find that the respondent could not have rejected the explanation for delay in filing the return for the purpose of waiver of interest when

the same had been accepted for purpose of dropping the penalty proceedings. Accepting such a notice would negative the equality clause

enshrined in article 14 of the Constitution of India. In view of the above, I am of the considered opinion that the impugned orders, annexures P2

and P8 suffer from the vice of arbitrariness. Consequently, the writ petition is allowed. The impugned orders annexures P2 and P8 passed by

respondent No. 1 on March 6, 1981, and passed by respondent No. 2 on February 25, 1986, respectively, are hereby quashed. No costs.

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