(1986) 01 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : C.W.P. No. 187 of 1975

Lehnu Mal Ram Krishan APPELLANT

Vs

Income Tax Officer and Others RESPONDENT

Date of Decision : 08-01-1986

Acts Referred:
Income Tax Act, 1961 — Section 139(1), 139(4)

Citation : (1986) 161 ITR 649 : (1986) ShimLC 242

Hon'ble Judges : V.P. Gupta, J;H.S. Thakur, J

Bench : Division Bench

Advocate : K.D. Mohan, for the Appellant; Indar Singh, for the Respondent

Judgement

V.P. Gupta, J.—By this writ petition, the petitioner has challenged the assessment order dated January 31, 1972, passed by the Income Tax Officer, "B" Ward, Simla, and the subsequent orders dated August 28, 1972 (passed by the Assistant Commissioner of Income Tax, Ambala), and December 10, 1974 (passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh), regarding the assessment year 1968-69.

2. The admitted facts are that the petitioner firm was to file a return of income for the assessment year 1968-69. A notice u/s 139(2) of the Income Tax Act, 1961, was served upon the petitioner on July 22, 1968, and the return could be filed till August 22, 1968.

3. The petitioner without filing the return made an application on October 10, 1969, seeking extension of time but this application was rejected and information was conveyed to the petitioner on October 22, 1969. An assessment order had not been passed by the Income Tax Officer and, in the meantime, the petitioner filed a return of his income on March 31, 1971, declaring Rs. 1,30,070.34 as income.

4. The Income Tax Officer, Simla, vide his order dated January 31, 1972, assessed the income of the petitioner at Rs. 1,47,570 (annexure "A"). The

petitioner filed an appeal with the Appellate Assistant Commissioner of Income Tax, Ambala Range, who allowed the petitioner''s appeal in part by granting a relief of Rs. 14,827. The assessable income thus remained at Rs. 1,32,743. A further appeal was preferred by the petitioner to the Income Tax Appellate Tribunal, Chandigarh Bench, but vide order dated December 10, 1974, this appeal was dismissed (annexure "C").

5. In the assessment order dated January 31, 1972, the Income Tax Officer had charged interest u/s 139(8) of the Act. The petitioner contended before the appellate authorities that the interest u/s 1 39(8) of the Act was not chargeable, but this contention of the petitioner was not accepted by the appellate authorities who took the view that they lacked jurisdiction to adjudicate upon the question of levy of interest and the petitioner had no right to appeal under the Act. In such circumstances, the petitioner has now challenged the orders of the Income Tax authorities regarding levy of interest.

6. We have heard the learned counsel for the parties and have also gone through the records of the case.

7. The assessment year involved in the present case is 1968-69 and the learned counsel for the parties admit that the provisions of the Act as applicable for the assessment year 1968-69 would be applicable in the present case. They further admit that Section 139 was subsequently amended and from April 1, 1972, interest for delay or default in furnishing the return of income (in all cases) is chargeable from the expiry of the due date u/s 139(1) of the Act.

8. Section 139 of the Act as applicable in the present case and, as it stood prior to the various amendments, reads as follows :

"139, Return of income.--(1) Every person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to Income Tax, shall 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-

(a) in the case of every person whose total income, or the total income of any other person in respect of which he is assessable under this Act, includes any income from business or profession, before the expiry of six months from the end of the previous year or where there is more than one previous year, from the end of the previous year which expired last before the commencement of the assessment year, or before the 30th day of June of the assessment year, whichever is later ;

(b) in the case of every other person, before the 30th day of June of the assessment year :

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.

(1A) Where as a result of an order u/s 154 or Section 155 or Section 250 or Section 254 or Section 260 or Section 262 or Section 264, the amount of tax on which interest was payable under Clause (iii) of the proviso to Sub-section (1) has been reduced, the interest shall be reduced accordingly, and the excess interest paid, if any, shall be refunded.

(2) In the case of any person who, in the Income Tax Officer''s opinion, is assessable under this Act, whether on his own total income or on the total income of any other person during the previous year, the Income Tax Officer may, before the end of the relevant assessment year, serve a notice upon him requiring him to furnish, within thirty days from the date of service of the notice, 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 my be prescribed :

Provided that on an application made in the prescribed manner the Income Tax Officer may, in his discretion, extend the date for the furnishing of the return, and when the date for furnishing the return, whether fixed originally or on extension, falls beyond the 30th day of September or, as the case may be, the 31st day of December of the assessment year, the provisions of Sub-clause (iii) of the proviso to Sub-section (1) shall apply.

(3) If any person who has not been served with a notice under Sub-section (2)

has sustained a loss in any previous year under the head ''Profits and gains of business or profession'' or under the head ''Capital gains'' and claims that the loss or any part thereof should be carried forward under Sub-section (1) of Section 72 or Sub-section (2) of Section 73, or Sub-section (1) of Section 74, he may furnish, within the time allowed under Sub-section (1), a return of loss in the prescribed form and verified in the prescribed manner and containing such other particulars as may be prescribed, and all the provisions of this Act shall apply as if it were return under Sub-section (1).

(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 ; (b) the period referred to in Clause (a) shall be-

(i) where the return relates to a previous year relevant to any assessment year commencing on or before the 1st day of April, 1967, four years from the end of such assessment year ;

(ii) where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April, 1968, three years from the end of the assessment year ;

(iii) where the return relates to a previous year relevant to any other assessment year, two years from the end of such assessment year.

(5) If any person having furnished a return under Sub-section (1) or Sub-section (2), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the assessment is made.

(6) The prescribed form of the return referred to in Sub-sections (1), (2) and (3) shall, in the case of an assessee engaged in business or profession, require him to furnish particulars of the location and style of the principal place where he carries on the business or profession and all the branches thereof, the names and addresses of his partners, if any, in such business or profession and if he is a member of an association or body of individuals, the names of the other members of the association or the body and the extent of the share of the assessee and the shares of all such partners or the members, as the case may be, in the profits of the business or profession and any branches thereof.

(7) No return under Sub-section (1) need be furnished by any person for any previous year, if he has already furnished a return of income for such year in accordance with the provisions of Sub-section (2).

(8) Notwithstanding anything contained in Clause (iii) of the proviso to Sub-section (1), the Income Tax Officer may, in such cases and under such circumstances as may be prescribed, reduce or waive the interest payable by any person under any provision of this section."

9. According to the contention of the learned counsel for the petitioner, the Income Tax authorities could only charge interest if the application filed for extension of time had been allowed by the Income Tax Officer. He contended that although an application for extension was filed but this request for extension of time was disallowed by the Income Tax Officer and, therefore, the Income Tax Officer had no jurisdiction to charge any interest. He contended that the rejection of the application meant that no application for extension of time was filed by the petitioner.

10. He referred to Section 139(2) of the present Act, as amended with effect from April 1, 1972, the relevant proviso of which reads as follows :

"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, and, notwithstanding that the date is so extended, interest shall be chargeable in accordance with the provisions of Sub-section (8)."

11. It was contended that the need to amend the law was necessitated because prior to April 1, 1972, the interest could only be charged if the Income Tax Officer had allowed the extension of time for filing the return. He also referred to the judgments in Kishanlal Haricharan Vs. Income Tax Officer, A-Ward , Commissioner of Income Tax Vs. Bahri Bros. (P.) Ltd., , Mulakh Raj Bimal Kumar Vs. Income Tax Officer and Others, and National Hotel and Dilkusha Cabin Vs. Income Tax Officer, "A" Ward and Another, .

12. The learned counsel for the respondents contended that the Income Tax Officer was justified in charging interest. It was contended that the petitioner had suppressed material facts and had not disclosed that an application for extension of time was filed which was rejected. The further contention was that the petitioner could not invoke the writ jurisdiction and the proper remedy was to file an application u/s 256 of the Act.

13. It was also contended that in view of the provisions of Section 139(1)(iii) read with Section 139(4)(a) and Section 139(8) of the Act, as applicable for the assessment year 1968-69, the petitioner was liable to pay interest.

14. We have considered the contentions of the learned counsel for the parties and have perused the records.

15. Regarding maintainability of the writ petition, we are of the view that in the facts and circumstances of the present case, when the appellate Income Tax authorities have held that they had no jurisdiction to entertain the appeal for the reason that no appeal was provided on the quantum of levying interest, the petitioner can definitely invoke the writ jurisdiction of this court for claiming an appropriate relief, if he is otherwise entitled to the same. The question of the applicability of Section 256 of the Act cannot apply in these circumstances. Hence, it is held that the present writ petition is maintainable.

16. Further, the petitioner in the petition has stated that no application for

extension of time was filed, but in the rejoinder it is admitted that an application for extension of time was filed which was rejected. According to the petitioner, this application was not in terms of the proviso to Section 139(1) of the Act.

17. After perusal of the petition, the reply affidavit and the rejoinder, we find that there is no suppression of material facts. In any event, because the learned counsel for the parties have admitted the factual position, we are not inclined to dismiss the petition on this technical objection.

18. Now, it becomes necessary to decide the question as to whether the order regarding charging of interest is valid in view of the provisions of Section 139 of the Act as it stood at the time of the assessment year 1968-69.

19. From a joint reading of the proviso, Clause (iii) to Section 139(1) and Section 139(4)(a), it is clear that a person who has not furnished a return within the time allowed to him under Sub-section (1) or Sub-section (2) of Section 139, can file a return for any previous year before the end of the period specified, in Clause (b) of Section 139(4) and the provisions of Clause (iii) of the proviso to Section 139(1) are to apply in every such case.

20. Under Clause (iii) of the proviso to Sub-section (1) of Section 139, interest at the rate of 9% per annum will become 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.

21. The contention of the learned counsel for the petitioner that if the return is filed u/s 139(4), then no interest is payable cannot be accepted for the reason that the provisions of Clause (iii) of the proviso to Sub-section (1) of Section 139 have been made applicable even to a case in which a return is filed by an assessee u/s 139(4). Section 139(8) only provides that in appropriate cases, the Income Tax Officer has the power to reduce or waive the interest payable by any person under the provisions of Section 139.

22. In Ramlal Ramgopal Agarwal Vs. Commissioner of Income Tax, , the assessee was required to file the return for the assessment year 1963-64 on or before June 30, 1963, in accordance with the provisions of Section 139(1) of the Act. The return, however, was filed on December 1, 1964. The Income Tax Officer ordered the assessee-firm to pay interest in accordance with Clause (iii) of the proviso to Section 139(1) and also imposed penalty u/s 271(1)(a) of the Act. The assessee challenged the order regarding imposition of the penalty and levy of interest under Clause (iii) of the proviso to Section 139(1). After interpreting Section 139(4), a Division Bench of the Madhya Pradesh High Court held that even in the case of a return filed within the time allowed u/s 139(4), the provisions of Clause (iii) of the proviso to Sub-section (2) thereof apply, that is, the interest was recoverable in accordance with the provisions of Clause (iii) of the proviso to Sub-section (1) in all such cases.

23. A Division Bench of the Mysore High Court in Indian Telephone Industries Co-

operative Society Ltd. Vs. Income Tax Officer, Special Survey Circle, Banglore and Another, also held that Clause (iii) of the proviso to Sub-section (1) of Section 139 of the Act applies not only where the assessee requests for extension of time for furnishing his return of income but also where the date fixed originally u/s 139(2) falls beyond the date specified in the proviso to Sub-section (2) of Section 139. The assessment years in this judgment were 1963-64 to 1969-70.

24. In Koipally Brothers Vs. Income Tax Officer, A-Ward and Another, , it was held by the Kerala High Court that 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, but 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 a 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 Clause (iii) of Sub-section (1) of Section 139, inoperative and otiose. The learned judge held that the interest could be charged u/s 139(4)(a) read with Clause (iii) of the proviso to Sub-section (1) of Section 139.

25. The judgments relied upon by the petitioner''s counsel are distinguishable and cannot help the petitioner in the present case.

26. In Kishanlal Haricharan Vs. Income Tax Officer, A-Ward , the assessment year was 1962-63. The assessee failed to file the return which was required to be submitted before June 30, 1962, u/s 139(1) of the Act, A notice was issued to the assessee u/s 139(2) calling upon him to submit a return before March 18, 1963, but no return was filed. In August, 1966, a notice u/s 142(1) of the Act was issued to the assessee to produce his accounts but the assessee prayed for time which was not granted and the assessment was made u/s 144 of the Act by the Income Tax Officer to the best of his judgment. The Income Tax Officer also directed the assessee to pay penal interest. In view of these facts, it was held that the proviso to Section 139(1)(b) was only applicable when an assessee requests for time under the third clause. But if no such request was made, then the third clause had no application. The provisions of Section 139(4) of the Act were not referred to or adjudicated upon in this judgment which is distinguishable.

27. In Commissioner of Income Tax Vs. Bahri Bros. (P.) Ltd., , it has been held that if no return is filed within the time specified in the notice u/s 139(2) of the

Act, but the same is filed later on and no extension of time had been applied for, the assessee is not liable to pay interest under Clause (iii) of the proviso to Section 139(1). The contention of the assessee in this judgment was that the return was filed u/s 139(4) of the Act but this contention was repelled on the facts and it was held that the return was filed u/s 139(2) of the Act. This judgment nowhere holds that in the case of a return filed u/s 139(4) of the Act, no interest is chargeable and, therefore, this judgment cannot help the petitioner.

28. In Mulakh Raj Bimal Kumar Vs. Income Tax Officer and Others, the provisions of Section 139(4) have again not been considered. This judgment has no application.

29. In National Hotel and Dilkusha Cabin Vs. Income Tax Officer, "A" Ward and Another, also, the assessee had not furnished the return u/s 139(4) of the Act. In this judgment, however, it has been held that in terms of Sub-section (4) of Section 139, Clause (iii) of the proviso to Section 139(1) was attracted but if the return is not filed within the time prescribed u/s 139(4), no question of attracting the provisions of Clause (iii) of the proviso to Section 139(1) arises. The return in this particular case was filed after a period of four years from the end of the assessment year. Hence, this judgment is again not helpful to the petitioner.

30. In view of the above discussion, it is held that in case a return is filed u/s 139(4) within the time allowed u/s 139(4) of the Act, then the Income Tax authorities are competent to charge interest under proviso (iii) of Section 139(1).

31. In para. 4 of the petition, the petitioner has stated that the return was submitted by him on March 31, 1971, u/s 139(4) of the Act for the assessment year involved. Thus, we are of the opinion that for a return which is filed u/s 139(4) of the Act, the Income Tax authorities have jurisdiction to charge interest under proviso (iii) to Section 139(1) of the Act and we follow the view which has been taken in Ramlal Ramgopal Agarwal Vs. Commissioner of Income Tax, , Indian Telephone Industries Co-operative Society Ltd. Vs. Income Tax Officer, Special Survey Circle, Banglore and Another, and Koipally Brothers Vs. Income Tax Officer, A-Ward and Another, .

32. As a result of the above discussion, we find that there is no merit in this writ petition which is hereby dismissed.

