
(1972) 12 MAD CK 0032

In the Madras High Court

Case No : Writ Petition No's. 954 of 1969 and 1727 to 1730 of 1970

Mahendrakumar Iswarlal and Co. and Another

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-12-1972

Acts Referred:

Income Tax Act, 1961 — Section 117A, 139, 139(1), 139(8)

Citation : (1974) 94 ITR 65

Hon'ble Judges : V. Ramaswami, J;G. Ramanujam, J

Bench : Division Bench

Advocate : T.S. Viswanatha Rao, for the Appellant; V. Balasubrahmanyam and J. Jayaraman, for the Respondent

Judgement

Kamanujam, J.—As the points raised in all these petitions are the same, it is convenient to deal with them together. The facts are more or less common in all these cases and hence the facts in Writ Petition No. 954 of 1969 alone are set out hereunder.

2. The petitioner therein was a partnership firm and it has been granted the status of a registered firm by order of the respondent dated March 17, 1969. The firm was dissolved in January, 1968, The firm submitted its return of income for the assessment year 1964-65, u/s 139(1) of the Income Tax Act, 1961, after obtaining extension of time from the respondent. On the basis of the said return the respondent by his order of assessment dated February 28, 1965, determined the total income at Rs. 1,03,021 and the tax payable thereon at Rs. 7,03.4. In the said order of assessment the respondent determined the interest payable by the firm u/s 139 at Rs. 3,868. The said interest has been calculated at 6 per cent, on the total income of Rs. 1,03,021 treating the firm as an unregistered firm as per proviso (iii)(a) of that section. The petitioner has challenged the said assessment so far as it relates to the levy of interest. The challenge has been made on two grounds: (1) the proviso (iii)(a) to Section 139(1) enabling the Income Tax Officer to treat the registered firm as an unregistered firm while

calculating the interest payable by the firm is arbitrary and ultra vires being a colourable exercise of the legislative power; (2) the proviso (iii)(b) to Section 139(1) which allows deduction of the advance tax paid for purposes of the levy of interest in respect of other assessees, has not been extended to registered firms and this clearly amounted to discrimination violative of article 14 of the Constitution. According to the petitioner, the levy of interest treating a registered firm as an unregistered firm without reference to its actual tax liability practically amounts to a penalty and ceases to be compensatory and that though the object of the levy of interest is to deter persons liable to pay Income Tax from retaining the money after the date on which it ought to have been paid to the Government, the legislature has no power to levy interest on a notional income payable by the registered firm as if it were an unregistered firm and such a levy is violative of articles 19(1)(g) and 31 of the Constitution. It is also urged by the assessee that in regard to assessees other than registered firms the interest levied is on the amount of tax actually assessed minus the advance tax paid. In the case of registered firms, however, the levy is not on the actual amount of tax due by the assessee but on a sum which, by importing a fiction, is treated as being due from him and even there without deducting the advance tax paid.

3. The revenue, however, contends that the provision of Section 139 regarding the levy of interest is intended to prevent the mischief of delayed submission of returns beyond the statutory period and to make the machinery section effective, that it is a reasonable provision intended to subserve the main object of the legislation, that Section 139 would be attracted only in the case of defaulting assessees and it is not a general provision like the charging section, that it is not open to the petitioner to challenge the proviso (iii)(a) to section 139(1) as illegal and discriminatory as the provision gets attracted only because of his own conduct in not submitting the return in time, and that in any event the provision is neither a colourable legislation nor does it violate articles 19(1)(g) and 31 of the Constitution, It is also contended by the revenue that interest need not always be charged on the amount of tax withheld by the assesses as Section 139(8) enables the waiver of the interest in suitable cases. So far as the treatment of the registered firms as unregistered firms for purpose of levy of interest under the proviso (iii)(a) to Section 139(1) is concerned, it is contended by the revenue that it is open to the legislature to create such a fiction in the matter of levy of interest, that there is no (Substantial distinction between registered firms and unregistered firms except in the matter of tax assessment and that even in the matter of tax but for the differentiation created by the statute both registered and unregistered firms have got the same characteristics and, therefore, a registered firm could validly be treated as an unregistered firm for the purpose of the levy of interest. As regards the petitioner's allegation that the denial of benefit of the deduction of advance tax in the computation of interest as per the proviso (iii)(b) to the registered firms alone is discriminatory, the revenue contends that the advance tax paid by the firm is only in its capacity as a registered firm, and not as an unregistered firm, that it has been rightly

excluded from deduction for the computation of interest, that this result follows from the legal fiction created under proviso (iii)(a) and that in the matter of calculation of interest a registered firm will have to be treated as an unregistered firm.

4. Before considering the tenability of these rival contentions it is necessary to set out the relative statutory provisions. Section 139(1) directs that every person, if his total income during the previous year exceeded the maximum amount which is not chargeable to Income Tax, shall furnish a return of his income in the prescribed form and in the prescribed manner setting forth the prescribed particulars on or before a particular date, and the proviso to that section enables the Income Tax Officer to extend the date for furnishing the return. The said proviso, so far as it is relevant for the present purpose, as on the relevant date is set out hereunder :

" 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

(iii) upto any period falling beyond the dates mentioned in clauses (i) and (ii), in which case, interest at six per cent, per annum shall be payable from the first day of October, or the first 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. As per Clause (iii)(a) if the time for submission of the return is extended beyond the dates mentioned in provisos (i) and (ii), interest at 6 per cent, is payable by a registered firm on the amount of tax which would have been payable if the firm had been assessed as an unregistered firm, and Clause (iii)(b) states that in respect of other assessee's interest is payable on the amount of tax payable on the total income. There is a further clause which reduces the amount of tax on which interest is payable by deducting the advance tax, if any, paid or any tax deducted at source. There is a controversy between the assessee and the revenue as to the scope of that clause. According to the assessee, the said clause providing for deduction of advance tax, if any, paid or tax deducted at source should govern both clauses (iii)(a) and (b) as otherwise Clause (iii)(a) is open to attack under article 14 of the Constitution as being discriminatory and the court should avoid such an interpretation which would invalidate the statutory provision. But, according to the revenue, the said clause qualified only Clause (iii)(b) and not both the clauses and that the benefit of deduction is not intended to be given to the firms on which interest is leviable under Sub-clause (a). At this stage we would like to dispose of the said second contention of the

petitioner first.

6. The petitioner's contention is that, if the construction of clauses (iii)(a), and (b) of the proviso to Section 139(1) as suggested by the revenue is accepted, the same will infringe article 14 in that it would make an invidious distinction between registered firms on the one hand and all other assesseees on the other in the matter of levy of interest and that there is no reasonable basis for making that classification for denying the benefit of deduction of advance tax paid and the tax deducted at source from the amount of tax on which the interest is to be levied, and that it is the duty of the court to construe a statutory provision in such a way as to give it validity. We are inclined to agree with this contention. Proviso to Section 139(1) at the stage of the Bill was to the effect that the interest at 6 per cent, per annum shall be payable on the amount of tax that may be found due on completion of the regular assessment from the first day of October of the assessment year to the date of furnishing the return and that it is only at the stage of the Select Committee the proviso in the present form came to be introduced. The proviso as it originally existed in the Bill made no distinction between a registered firm and an unregistered firm in the matter of levy of interest. It is the Select Committee which suggested the modification of the proviso treating registered firms and unregistered firms alike in the matter of levy of interest and the note on that clause in the objects and reasons merely states that the amendment proposed in the proviso is for calculation of interest in the case of registered firms which delay submission of returns. No reason has been suggested as to why there should be a classification between registered firms on the one hand and others in general on the other in the matter of entitlement to deduction of advance tax, if any, paid by them, nor any reason has been set out in the counter-affidavit filed by the revenue as warranting the distinction sought to be made between registered firms and others. There being no material to show the intention of the legislature to make a distinction between registered firms on the one hand and other assesseees in general on the other hand in the matter of deduction of the advance tax paid, if any, or the tax deducted at source for purpose of computation of interest, the court is entitled to presume that the benefits of deduction are for all assesseees including registered firms. If the intention of the legislature were otherwise, it would have made the matter clear in Sub-clause (a) of proviso (iii). Proviso (iii) having treated registered firms as unregistered firms and subjecting them to the levy of interest on a notional income, there appears to be no reason why they should be subjected to a further disadvantage by denying them the benefit of the deduction of the advance tax paid or amount of tax deducted at source. We are, therefore, inclined to construe the section in the manner suggested by the petitioner. An identical contention was raised before Ramaprasada Rao J. in W.Ps. Nos. 2043/66, etc. Mahendrakumar Ishwarlal and Co. and Others Vs. Union of India (UOI) and Others, and the learned judge has, after an elaborate consideration of the point in all its aspects, if we may say so with respect, held that the interpretation of the proviso as suggested by the revenue cannot be accepted.

The reasons given by the learned judge are: (1) the context of the proviso and the punctuation of Sub-clauses (a) and (b) to Clause (iii) of the proviso make it abundantly clear that the benefit of deduction should go to both the categories referred to in Sub-clause (a) and Sub-clause (b) of Clause (iii) of the proviso ; (2) if the parenthesis " reduced by the advance tax, if any, paid or by any tax deducted at source, as the case may be " is taken to govern only Clause (b) as urged by the revenue it would not only lead to discrimination between similar assesseees liable to pay advance tax but would also violate the well-established principles of contemporaneo expositio. We respectfully agree with the said reasoning. A3 pointed out by the learned judge, as in every other case a registered firm also is bound to pay advance tax, and, therefore, it is entitled to secure all the benefits consequential upon such advance payment. All such persons, who pay advance tax and as a result thereof secure certain privileges in the matter of counter-interest thereon, belong to a class by themselves and the registered firms who have committed default in the submission of returns cannot be treated differently from the assesseees who have committed similar defaults and deprive them of the benefit which they would be entitled in law arising out of the payment of advance tax unless the legislature expressly or by necessary intendment takes away that benefit in the case of registered firms alone while it gives such benefit to other assesseees who have committed a similar default. It is unreasonable to make such a differentia, having no rational nexus with the object of the Act and in this case it cannot be said to be the intention of the legislature that as between the same defaulting assesseees one should have the benefit of the advance tax paid but the other should not. As we are interpreting the proviso in the manner suggested by the petitioner, the other alternative contention urged by the petitioner that the proviso in so far as it does not give the benefit of deduction to the registered firms alone is violative of article 14 of the Constitution does not arise.

7. Then taking up the first contention, the assessee's main grievance is that the treatment of registered firms as unregistered firms in the matter of levy of interest for default in submission of the return is unreasonable in that in the case of unregistered firms who have committed the same default they will be paying interest on the amount of tax actually payable by them but in the case of registered firms interest is made payable on a notional income and a notional tax calculated on that income and that, therefore, the levy of interest in the case of registered firms, on such notional income clearly amounts to a penalty. It is also urged by the petitioner that the levy of interest could only be compensatory and that if it has no relation to the amount of tax payable by the assessee it becomes penalty, and, therefore, confiscatory. The learned counsel for the petitioner refers to the decision in *T. Venkata Krishnaiah and Co. Vs. Commissioner of Income Tax*, in support of his contention that interest is normally leviable on actual income and not on any notional income. In that case the question arose as to whether the Income Tax Officer had the power to levy a penalty u/s 271(1)(a) when he had already levied interest u/s 139. In dealing with that question the

court had to consider the intendment; and purpose of Clause (iii) to the proviso to Sub-section (1) of Section 139, and after comparing that provision with the other provisions in the Act such as Sections 140A and 141, the court expressed :

" Therefore interest payable under Clause (iii) of the proviso to subsection (1) of Section 139 is nothing but simple interest or compensation that could accrue or would have accrued to the State, if the assessee had filed his return as required by Section 139 and paid the tax as per the provisions of Section 140A. It is not, therefore, correct to state that the interest so payable is penal in character nor does it amount to penalty of any kind levied under the Act. The very intendment and purpose of this provision to levy interest on the amount of tax payable by the assessee is to make the assessee feel their responsibility and statutory obligation to furnish the returns of their incomes within the time provided u/s 139 of the Act."

8. These general observations dealing with the scope of section 139 do not throw any light on the question posed here as to whether the registered firms could be treated as unregistered firms for the collection of interest, The above decision cannot also be treated as an authority for the proposition that the interest collected should always be compensatory. As a matter of fact in Jain Bros. and Others Vs. The Union of India (UOI) and Others, it was urged before the Supreme Court that Section 271(2) of the Income Tax Act, 1961, contravened article 14 of the Constitution in that it treated a registered firm as an unregistered firm for the purpose of imposition of a penalty u/s 271(1). It was pointed out in that case that in the case of assessee other than registered firms the maximum penalty imposable u/s 271(1)(i) cannot exceed in the aggregate 50% of the tax payable by the assessee ; whereas, in the case of registered firms, the maximum penalty is not made to depend upon the tax assessed on or payable by such firms. But, registered firms will have to pay the same penalty as unregistered firms which may far exceed the maximum limit of 50% prescribed u/s 271(1) and this clearly constituted a discrimination under article 14 of the Constitution. The Supreme Court expressed :

" Now, a firm when registered is treated as a separate" entity liable to tax. After 1956, it has to pay tax at a special reduced rate. If a firm got itself registered the partners were entitled to certain benefits and advantages. It was, however, open to the legislature to say that once a registered firm committed a default attracting penalty, it should be deemed (1). or considered to be an unregistered firm for the purpose of its imposition. No question of discrimination under article 14 can arise in such a situation. We fully share the view of the High Court that there was nothing to prevent the legislature from giving the benefit of a reduced rate to a registered firm for the purpose of tax but withhold the same when it committed a default and became liable to imposition of penalty."

9. It is contended by the learned counsel for the petitioner that a conjoint reading of Sections 182, 185 and 187 would indicate that the firm once registered will continue to be a registered firm until the registration is cancelled

u/s 187 and, therefore, it is not open to the legislature to treat a registered firm as an unregistered firm merely because it has defaulted to file the return in time. The learned counsel refers to Section 271(2) which has used the non obstante clause for treating a registered firm as if it were an unregistered firm for the purpose of levy of penalty u/s 271(1) and states that in the absence of such a non obstante clause in the proviso to Section 139 it is not open to the legislature to treat a registered firm as if it were an unregistered firm for the purpose of imposition of interest. We are not impressed with this argument. The question does not depend upon the existence or otherwise of the non obstante clause in Section 139(1). The question is whether it is open to the legislature to treat a registered firm as an unregistered firm when it has committed a default in submission of the return. It cannot be disputed that, but for the privileges given by the statute to a registered firm, it would be in the same position as an unregistered firm. Therefore, it is open to the legislature to say that one or other of the privileges granted to a registered firm will not be available to such firms who have defaulted to submit the return in time. It is untenable to say that the legislature which granted the privileges cannot take away any of the privileges given to registered firms at all events. If the legislature chooses to withdraw the privileges given to a registered firm, that cannot be attacked as being discriminatory between registered firms and unregistered firms. Therefore, subjecting the registered firms to the same treatment as unregistered firms in the matter of levy of interest cannot be said to be in any way arbitrary or colourable exercise of the legislative power. Further, the provisions in Section 139(8) and Rule 117A give sufficient discretion to the Income Tax Officer to reduce or waive the interest payable u/s 139 in a case in which the assessee produces evidence to his satisfaction that he was prevented by sufficient cause from furnishing the return within time. Thus, it is only in cases where the returns have been withheld without sufficient cause the interest contemplated by Section 139(1) is levied. Therefore, the proviso (iii)(a) to Section 139(1) cannot be said to be unreasonable or discriminatory. We have to, therefore, reject the petitioner's contention in this regard. The same view has been taken by Ramaprasada Rao J. in the decision set out above and the relevant observations are these :

"...it is open to the legislature to say that once a registered firm fails to submit its returns within the prescribed time and it applies for extension of time before the Income Tax Officer, then it can prescribe certain conditions for the exercise of such a discretion in favour of the defaulting assessee and, consequentially, impose an additional burden of paying interest at the prescribed rate for the period of extension. No question of discrimination under article 14 can arise in such a situation. There is nothing to interdict the legislature from conferring certain privileges and benefits on a registered firm under certain situations and impose additional burdens in the nature of payment of interest over a deemed income fixed by the legislature, when it is not disputed that the registered firm committed a default in the matter of submission of the returns in time and became liable to be dealt with as such, A classification has been made in the Act

with the avowed object of preventing such delayed returns and consequentially further delay in the payment of lawful dues to the State. "

10. The result is that the writ petitions are allowed in part and the petitioners will be entitled to have the advance tax paid by them deducted from the total tax as determined by the respondent for purpose of calculation of interest u/s 139(1), proviso. The respondent in each of these cases is directed to modify the assessment accordingly. There will be no order as to costs in any of these petitions.