

(2011) 11 AHC CK 0375

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1444 of 2009

Manoj Kumar Gupta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 115N, 143(3), 147, 148, 220

Citation : (2012) 1 ADJ 395

Hon'ble Judges : Sunil Ambwani, J;K.N. Pandey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. We have heard Shri Nikhil Agarwal, learned counsel for the petitioner. Shri Dhananjay Awasthi appears for the income tax department.

2. This writ petition is directed against an order passed by the Commissioner of Income Tax, Varanasi, in so far as it rejects the application of the petitioner in respect of 75% of the interest imposed on him and for quashing levy of interest u/s 243A and 243B of the Act.

3. The petitioner filed original return in Form No.4A declaring income of Rs. 37,000/- and paying presumptive tax of Rs. 1400/- u/s 115N of the Income Tax Act, as it stood at the relevant time on 29.3.1994. A notice u/s 148 of the Act was issued in the year 1997 on which the petitioner informed the Assessing Authority (AO) that he has already deposited Rs. 1400/- with the return. The petitioner, however, submitted another return of income in compliance with the notice u/s 148 and disclosed that on 11.3.1994 he had purchased property worth Rs. 10,25,000/- explaining the source of income from which the property was purchased.

4. On 31.3.1999 the Assessing Officer passed an order u/s 143 (3) read with Section 147 of the Act assessing the petitioner to tax at total income of Rs.

16,63,630/-. The AO also subjected to gifts valued at Rs. 3,00,000/- received by the petitioner from 12 persons, for purchase of property and another Rs. 3 lac received from one Smt. Nirmala Devi, as unexplained loan. The A.O. also found that source of receipt of Rs. 1,66,620/- was also not explained.

5. The Commissioner of Income Tax (Appeals) allowed the appeal and remanded the matter to the assessing authority for fresh examination, after recording the findings that the petitioner had satisfactorily explained the source of gifts, as well as capacity of the donor.

6. A fresh assessment order was passed after remand by the A.O. allowing the relief as given by the CIT (A) and reducing the total income on assessment to tax to Rs. 16,63,630/-. The petitioner was taxed on total net income of Rs. 4,27,630/-.

7. The petitioner again preferred an appeal before CIT (A) in respect of Rs. 3 lac, which has been added by AO to his income. The CIT (A) by his order dated 9.2.2004 allowed the appeal and deleted the addition of Rs. 3 lacs from the net taxable income.

8. The petitioner filed an appeal against the orders dated 17.7.2000 passed by the CIT (A) remanding the matter and the order dated 3.2.2004 passed by the CIT (A). The department also filed an appeal. The Income Tax Appellate Tribunal allowed both the appeals with directions to CIT (A) to call for the remand report in respect of gift of Rs. 3 lacs received by the petitioner from Smt. Nirmala Devi as also the source of investment of Rs. 1,66,000/-.

9. On 19.3.2007 after a period of three years CIT (A) passed an order, whereby the gift of Rs. 3 lacs from Smt. Nirmala Devi was added to the income of the petitioner but deduction in respect of Rs. 1,66,000/- was allowed.

10. The petitioner preferred an appeal in the Income Tax Appellate Tribunal, which has by its order dated 7.5.2008 granted a relief of Rs. 3 lacs obtained from Smt. Nirmala Devi but confirmed the addition of Rs. 3 lacs towards loan obtained by the petitioner from 12 persons to the petitioner's taxable income.

11. The Income Tax Officer after the final orders of the ITAT imposed interest of Rs. 4,77,412/- on the petitioner as well as interest u/s 234A of the Act. In the demand the tax liability was calculated at Rs. 75,000/- and the interest imposed u/s 220 of the Act at Rs. 4,77,412. The petitioner disputed the levy of interest u/s 234A before the Assessing Authority. He, thereafter, approached the Commissioner of Income Tax, Varanasi u/s 220 (2A) of the Act to waive of the interest pleading that he was not at fault in making payments as the matter was pending at several stages. The petitioner relied upon Auro Food Ltd. Vs. Commissioner of Income Tax and another, that the power vested in the Commissioner of Income Tax u/s 220 (2A) is discretionary coupled with duty to be exercised judicially and reasonably on the relevant facts.

12. The Commissioner of the Income Tax by the order under challenge after

discussing the entire facts in detail allowed reduction in interest to the extent of 25%. The reasons for exercising the discretion to the waiver of only 25% on the interest payable are given as follows:

A. For assessment year 2008-09 the assessee filed return of income on 31.7.2008 declaring an income of only Rs. 1,08,300/- including income from salary of Rs. 1,40,400/- for working with M/s Varuna Bearing (P) Ltd. and thus the interest for the year 1994-95 at Rs. 4,77,412/- in the background of the case may cause some amount of hardship to the assessee, specially, when the assessee had essentially a salary income;

B. The default in payment of amount on which interest is payable was due to the circumstances beyond the control of the assessee. The assessee's submission in this regard appears to be somewhat genuine;

C. the delay in payment of tax in arrears cannot be entirely attributable to the assessee, since this was a case of prolonged adjudication.

D. The assessee had cooperated in the entire matter and paid the full demand previously raised on 27.9.2000.

13. After recording these findings in favour of the assessee, the CIT observed that the assessee's contention that the interest u/s 234A be withdrawn as there was no delay is based on representation of incorrect set of facts. The assessee had filed statement of income in Form 4A, which was not the relevant return and as such assessee's petition was contrary to his contentions raised by him.

14. Shri Nikhil Agarwal, learned counsel appearing for the petitioner submits that u/s 220 (2A), the Commissioner has powers to reduce or waive amount of interest paid or payable, if he is satisfied that:

i) Payment of such amount has caused or would cause genuine hardship to the assessee.

ii) default in payment of the amount on which interest has been paid or was payable was due to circumstances beyond the control of the assessee; and

iii) the assessee has cooperated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due to him.

15. Shri Agarwal submits that after recording findings that payment of such huge amount of interest in view of the petitioner being a salaried employee will cause hardship to him; the alleged default in payment was due to circumstances beyond the control of the assessee, and that assessee had cooperated in the enquiry relating to assessment, the Commissioner erred in exercise of his jurisdiction in waiving interest only to the extent of 25% only on the ground that the initial return should have been filed on a Form other than Form No.4A.

16. Shri Agarwal submits that after recording the findings in favour of the petitioner with regard to all the ingredients of Section 220 (2A), the

Commissioner of Income Tax acted with a bias in favour of the department, in allowing the waiver only to the extent of 25%. He has relied upon the judgment of the Supreme Court in KISHAN LAL Vs. UNION OF INDIA AND ANOTHER., in which the Supreme Court held that decision taken by the authority u/s 220 (2A) can be subjected to judicial review by filing petition under Art.226 of the Constitution of India. It is imperative for the authority to give some reasons while disposing of the application. In Auro Food Ltd. (Supra) after reiterating the three statutory conditions u/s 220 (2A), the Madras High Court observed that the discretionary power to be exercised by the Commissioner of Income Tax is coupled with the duty to be exercised judicially and reasonably based on relevant facts. The authority concerned should not act as a mere tax gatherer but as quasi judicial authority vested with the power of mitigating hardship to the petitioner.

17. Shri Dhananjay Awasthi has defended the order on the grounds that the CIT has rightly exercised his jurisdiction. There were no compelling grounds before the CIT for total waiver. After applying his mind to the facts of the case he reduced the amount of interest and that the petitioner has been given maximum relief. In the present case after discussing the entire facts of the case in which the matter was remanded twice to CIT (A) and discussing the chronology of events, the CIT found that all the conditions for exercise of jurisdiction to reduce or waive the amount of interest, namely (1) the genuine hardship to be caused to the assessee; (2) the interest payable was due to circumstance beyond the control of the assessee and (3) that assessee had cooperated in the enquiry, he was clearly of the opinion that the huge liability of interest has been created for no fault of the petitioner. He, however, exercised his discretion by reducing interest only to the extent of 25%, on the ground that the initial return in form no.4A was not filed in time. The return was filed in response to notice u/s 148. Form 44A was not the relevant return on which initial return was filed.

18. In our opinion this ground for restricting the exercise of jurisdiction to the extent of 25% was not included in the conditions statutorily prescribed, to be looked into by the CIT u/s 220 (2A) of the Act. Where the statute prescribes the conditions on which discretion is to be exercised, any deviation from such conditions, on the grounds, which are not relevant without any reference to the statutory conditions, the exercise of power is vitiated. It virtually amounts to supplying the reasons for exercise of powers, which are extraneous to the grounds prescribed by the legislature. Where the statute prescribes the conditions for payment and authorises the rate of interest, the conditions of waiver given in the same statute must be strictly applied in exercising such power.

19. Although the entire Act confers discretionary powers at some or other stage of the assessment, the power to reduce or waive the amount of interest paid or payable by the assessee u/s 220 (2) is a wider discretion, which is not conceived by the statute to be left with the Commissioner of Income Tax to be exercised on

any condition. The conditions have been laid down u/s 220 (2A) of the Act. The enquiry to be made by the Commissioner thus has to confine to the satisfaction of the three conditions. Although no such plea has been taken, we observe that though it is not necessary that all the three conditions must be fulfilled, the Commissioner must give reasons as to why non-fulfillment of any one of the conditions would be sufficient to waive the amount of interest.

20. In *Manish Maheshwari Vs. Asstt. Commissioner of Income Tax and Another*, , it was held that the fiscal statutes must be strictly construed. Where two interpretations are possible, the Court ordinarily would interpret the provisions in favour of the tax payer and against the revenue. The Supreme Court held in para 13, 14 and 15 as follows:

13. A taxing statute, as is well-known, must be construed strictly. In *Sneh Enterprises Vs. Commnr. of Customs, New Delhi*, , it was held :

While dealing with a taxing provision, the principle of "Strict Interpretation" should be applied. The Court shall not interpret the statutory provision in such a manner which would create an additional fiscal burden on a person. It would never be done by invoking the provisions of another Act, which are not attracted. It is also trite that while two interpretations are possible, the Court ordinarily would interpret the provisions in favour of a tax-payer and against the Revenue.

14. Yet again in *J. Srinivasa Rao Vs. Govt. of A.P. and Another*, , it was held :

In a case of doubt or dispute, it is well-settled, construction has to be made in favour of the taxpayer and against the Revenue.

15. In *Ispat Industries Ltd. Vs. Commissioner of Customs, Mumbai*, , this Court opined:

In our opinion if there are two possible interpretations of a rule, one which subserves the object of a provision in the parent statute and the other which does not, we have to adopt the former, because adopting the latter will make the rule ultra vires the Act.

21. We are of the opinion that where all the three conditions are found to be satisfied, the CIT would be failing to exercise his jurisdiction, in reducing or waving amount of interest paid or payable by the assessee. In this case the CIT, in our opinion, failed in exercise of the jurisdiction in reducing or waiving the amount of interest, which was without doubt, much larger as against the demand of tax.

22. The writ petition is allowed. The order dated 26.2.2009 passed by the Commissioner of Income Tax, Varanasi in the matter of the petitioner for the assessment year 1994-95 u/s 220 (2) read with Section 220 (2A) of the Income Tax Act, 1961 is set aside. The Commissioner of Income Tax, Varanasi will consider the question of waiver of interest strictly in terms of conditions laid down in Section 220 (2A) on which he has recorded his finding in para 4.3.1 and

4.3.2 of the impugned order and in the light of the observations made by us in this judgment. The fresh order will be passed, within three months.