(2011) 02 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9811 of 1993

Mohinder Singh APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:
Income Tax Act, 1961 — Section 139, 139(8), 148, 215, 217

Citation : (2013) 353 ITR 278

Hon'ble Judges : Ajay Kumar Mittal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : Rajesh Garg, for the Appellant; Tejinder K. Joshi, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kumar Mittal, J.—The petitioner seeks a writ of mandamus directing the respondent to consider his application dated December 28, 1987, moved u/s 273A of the income tax Act, 1961 (for short "the Act"), for waiver of the interest charged and the penalty leviable, relating to the assessment year 1987-88. The petitioner, who is a partner in the firm, M/s. United Construction Co. (Railways Division), filed returns of income for the assessment years 1984-85 to 1987-88 on different dates prior to issuing of notice u/s 139 or 148 of the Act making full and true disclosure of his income. As per the averments of the petitioner, he made payment of the tax assessed and the interest charged thereon in consequence of assessments relating to the above assessment years. The Assessing Officer, however, initiated proceedings under sections 271(1) (a) and 273 of the Act for late filing of the returns and also non-payment of advance tax, besides charging interest under sections 215/ 217 and 139(8) of the Act. The petitioner moved application u/s 273A of the Act for waiver of the interest charged and the penalty leviable under sections 271(1)(a) and 273 of the Act. According to the petitioner, the other three partners of the firm made applications containing similar prayer which were considered by the respondent, but, vide order dated March 31, 1993, the respondent did not consider the claim of the petitioner for the assessment year 1987-88, notwithstanding the fact that he had furnished reply dated, January 28, 1993, to the respondent asserting that the provisions of section 273A of the Act no where provided that application for seeking relief u/s 273A of the Act could be considered only for one assessment year if the returns were filed on different dates. The petitioner also made a prayer that his claim for the relief relating to the assessment years 1986-87 and 1987-88 may be considered as the petition made by him for the assessment years 1984-85 and 1985-86 had been withdrawn.

2. The respondent in a written statement submitted that the provisions of section 273A of the Act and the Explanation appended thereto has been correctly interpreted by it which provides that the assessee will be entitled to get relief under the aforesaid provisions only once, and since, in the present case, the dates of filing of the return were different, it could not be said that it was one disclosure.

3. We have heard learned counsel for the parties and have perused the record.

4. Learned counsel for the petitioner referred to sub-section (3) of section 273A of the Act and placed reliance on a decision of the Karnataka High Court in C. Subramani Vs. Assistant Commissioner of Income Tax and another, to submit that the order refusing to consider the petitioner''s application for the assessment year 1987-88 was unsustainable in law. The learned counsel for the respondent, on the other hand, supported the order passed by the Commissioner of income tax.

We have considered the submissions made by the respective counsel. Section 273A(3), which is relevant for the purpose of this case, reads thus:

273A (1) Notwithstanding anything contained in this Act, the Commissioner may, in his discretion, whether on his own motion or otherwise,--...

(3) Where an order has been made under sub-section (1) in favour of any person, whether such order relates to one or more assessment years, he shall not be entitled to any relief under this section in relation to any other assessment year at any time after the making of such order:

5. According to sub-section (3) of section 273A of the Act, an assessee can get relief only once, whether the application relates to one or more assessment years. The question that arises for determination is, when an application is made for waiver of interest and penalty for different assessment years, whether an assessee is entitled to claim benefit of waiver u/s 273A of the Act for all the assessment years by having his application considered by the Commissioner of income tax by a common order. Similar issue was considered by the C. Subramani Vs. Assistant Commissioner of Income Tax and another, and while interpreting sub-section (3) of section 273A and holding the issue in favour of the assessee, it was observed (page 349):

Sub-section (3) provides that an order to be made u/s 273A may pertain to one or more than one assessment year. But, once that power is exercised, the assessee will not be entitled to any relief in relation to another assessment order after making such an order. In the decision in Ram Sarandas Har Swaroop Mal and Another Vs. Commissioner of Income Tax and Another, , it is held that a common application filed for three different years was disposed of by a common order and in that order, the Commissioner confined the relief to only one year and, in respect of other two years, he refused to grant the relief. The Allahabad High Court, explaining the scope of section 273A(3), stated that when the conditions are fulfilled, it is certainly open to the Commissioner to waive or reduce the interest, as the case may be. But, once that power is exercised, thereafter it should not be open to him to exercise that power again after making such an order. In the present case, although applications had been filed on different dates or separately, still the relief sought for by the petitioner was considered together by a common order and the bar under sub-section (3) is only attracted only after the order is made and not prior to that. When that is so, it was not open to the Commissioner to have refused to consider the application filed by the petitioner for the assessment year 1986-87.

6. In view of the above, the Commissioner of income tax was not justified in declining the prayer of the assessee to entertain his application for waiver of interest and penalty for the assessment year 1987-88 and the impugned order to that extent cannot be legally sustained. Accordingly, the writ petition is allowed and the matter is remitted to the Commissioner of income tax to consider and dispose of the application of the petitioner for waiver of the interest and the penalty relating to the assessment year 1987-88 afresh in accordance with law.