(1998) 09 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 135 of 1991

M.P. SHANKER RAO APPELLANT

Vs

COMMISSIONER OF INCOME TAX RESPONDENT

Date of Decision : 14-09-1998

Acts Referred:
Income Tax Act, 1961 — Section 139, 148, 215, 217, 271

Citation : (1999) 152 CTR 201

Hon'ble Judges : S.K. Kulshrestha, J

Bench : Division Bench

Judgement

S.K. KULSIMSTHA, J.:

This petition has been filed challenging the order of the CIT (Annexure ''G'') by which he has rejected the application of the petitioner for waiver of the penalty and the interest filed under s. 273A of the IT Act (hereinafter referred to as ''the Act'').

2. Sec. 273A in the relevant year reads as under:

''273A. Power to reduce or waive penalty etc. in certain cases.-W Notwithstanding anything contained in this Act, the CIT may, in his discretion, whether on his own motion or otherwise.

(i) reduce or waive the amount of penalty imposed or impassable on a person under cl. (i) of sub-s. (1) of s. 271 for failure, without reasonable cause, to furnish the return of total income which he was required to furnish under sub-s. (1) of s. 139, or

(ii) reduce or waive the amount of penalty imposed or imposable on a person under cl. (iii) of sub-s. (1) of s. 271; or

(iii) reduce or waive the amount of interest paid or payable under sub-s. (8) of s. 139 or s. 215 or s. 217 or the penalty imposed or imposable under s. 273;

if he is satisfied that such person-

(a) in the case referred to in cl. (1), has, prior to the issue of a notice to him under sub-s. (2) of s. 139, voluntarily and in good faith made full and true disclosure of his income;

(b) in the case referred to in cl. (ii), has, prior to the detection by the ITO of the concealment of particulars of income or of the inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made full and true disclosure of such particulars;

(c) in the cases referred to in cl. (iii), has, prior to the issue of a notice to him under sub-s. (2) of s. 139, or where no such notice has been issued and the period for the issue of such notice has expired, prior to the issue of notice to him under s. 148, voluntarily and in good faith made full and true disclosure of his income and has paid the tax on the income so disclosed,

and also has, in all the cases referred to in cls. (a), (b) and (c), co-operated in any enquiry relating to the assessment of his income and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assessment year.

Explanation L-For the purpose of this sub-section, a person shall be deemed to have made full and true disclosure of his income or of the particulars relating thereto in any case where the excess of income assessed over the income returned is of such a nature as not to attract the provisions of cl. (c) of sub-s. (1) of s. 271. (2). Notwithstanding anything contained in sub-s. (1).-

(a) If in a case the penalty imposed or imposable under cl. (i) of sub-s. (1) of s. 271 or the minimum penalty imposable under s. 273 for the relevant assessment year, or, where such disclosure relates to more than one assessment year, the aggregate of the penalty imposed or imposable under the said clause or of the minimum penalty imposable under the said section for those years, exceeds a sum of (one hundred thousand rupees), or

(b) If in a case falling under cl. (c) of sub-s. (1) of s. 271, the amount of income in respect of which the penalty is imposed or imposable for the relevant assessment year, or, where such disclosure relates to more than one assessment year, the aggregate amount of such income for those years, exceeds a sum of five hundred thousand rupees,

no order reducing or waiving the penalty under sub-s. (1) shall be made by the Chief CIT or CIT, except with the previous approval of the Board.

(3). Where no order has been made under sub-s. (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.

(4). Without prejudice to the powers conferred on him by any other provision of this Act, the CIT may, on an application made in this behalf by an assessee, and after recording his reasons for so doing, reduce or waive the amount of any penalty payable by the assessee under this Act or stay or compound any proceeding for the recovery of any such amount, if he is satisfied that-

(i) to do otherwise would cause genuine hardship to the assessee, having regard to the circumstances of the case; and

(ii) the assessee has co-operated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due from him:

Provided that where the amount of any penalty payable under this Act or, where such application relates to more than one penalty, the aggregate amount of such penalties exceeds one hundred thousand rupees, no order reducing or waiving the amount or compounding any proceeding for its recovery under this sub-section shall be made by the Commissioner except with the previous approval of the Board.

(5). Every order made under this section shall be final and shall not be called into question by any Court or any other authority. "

3. Sec. 273A itself contains criteria in cls. (a), (b) and (c) appearing in sub-s. (1) thereof for recording satisfaction about existence of the conditions contained therein and taking a decision in the matter. Learned counsel for the petitioner has produced the original copy of the impugned order as was received by the petitioner, which indicates that except for the first and the last page of the impugned order (Annexure ''G''), the reasons have been inserted in the intervening pages in cyclostyled proforma, which does not depict any application of mind to the requirement of s. 273A of the Act. Learned counsel for the Revenue was unable to point out from the impugned order containing common reasons in similar applications filed by the petitioner in cyclostyled proforma that mind was applied by the learned CIT on the objective criteria laid down in the provisions in connection with each and every application to come to his independent conclusion thereon. The matter, therefore, deserves to be remanded to the learned CIT for his decision afresh on each application under s. 273A of the Act since separate application has been filed for each assessment year.

4. Consequently, this petition is allowed and the order (Annexure ''o'') passed by the respondent is set aside and the respondent is now directed to consider and decide the applications under s. 273A of the Act in accordance with law. The amount of security deposit, if outstanding, be refunded to the petitioner. There shall be no order as to costs.