(1996) 09 P&H CK 0130

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 809 of 1992

NARESH KUMAR	APPELLANT
Vs	
GOVERNMENT OF INDIA and Others	RESPONDENT

Date of Decision : 06-09-1996

Acts Referred:
Income Tax Act, 1961 — Section 273A

Citation : (1997) 141 CTR 507

Hon'ble Judges : Ashok Bhan, J

Bench : Division Bench

Judgement

ASHOK BHAN, J. :

The petitioner has impugned annexures "P-4" and "P-5", whereby the application filed by him under s. 273A of the IT Act, 1961, (hereinafter referred to as "the Act"), has been dismissed by the CIT, Jalandhar, for the asst. yrs. 1987-88 and 1988-89.

2. The petitioner-assessee filed Income Tax returns for the asst. yrs. 1987-88 and 1988-89 under the voluntary scheme prior to the issuance of notices under s. 148 of the Act. The assessing authority imposed the tax for the asst. yrs. 1987-88 and 1988-89. It also imposed a penalty at the rate of 10 per cent of the tax, i.e., Rs. 6,375 for the asst. yr. 1987-88 and Rs. 5,962 for the asst. yr. 1988-89. Interest under ss. 139(8) and 215/217 of the Act was also imposed.

The petitioner filed an application under s. 273A of the Act before the CIT, Jalandhar, for waiver and reduction in the amount of penalty, challenging the levy of penalty. The application under s. 273A of the Act was dismissed by the CIT, Jalandhar, on the ground that the petitioner did not satisfy the conditions laid down in s. 273A of the Act for waiver or reduction in the amount of penalty. It was held that the assessee had not paid/made satisfactory arrangements for the payment of tax and interest under ss. 139(8) and 215/217 of the Act for the asst. yrs. 1987-88 and 1988-89, aggrieved against which, the present petition has been filed.

3. Sec. 273A as it existed at the relevant time, reads as under :

"273A. Power to reduce or waive penalty, etc., in certain cases - (1) 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 imposable 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. (i), 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 AO, 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 - For the purposes 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".

Sec. 273A of the Act lays down five conditions fundamental to the exercise of discretion by the CIT to reduce or waive penalty in certain cases. The same are :

(i) that the returns were filed by the assessee prior to the issue of a notice under ss. 148, 139(2);

(ii) that these were filed voluntarily and in good faith;

(iii) that the assessee had made a full and true disclosure of his net wealth (income);

(iv) that he had co-operated in the inquiry relating to the assessment of his net wealth (income); and

(v) that he had paid or made satisfactory arrangements for the payment of the tax.

The petitioner had filed the returns voluntarily and in good faith, making full and true disclosure of his income but did not satisfy the condition regarding payment/ making satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under the Act. In the petition, there is no averment that the petitioner had either paid or made satisfactory arrangements for the payment of tax or interest payable under the Act. The five conditions laid down in s. 273A of the Act are conditions precedent before the CIT is clothed with jurisdiction under s. 273A of the Act to either waive or reduce the amount of penalty. Since the petitioner did not satisfy one of the conditions laid down in s. 273A of the Act, no case was made out for either waiver or reduction in the amount of penalty and interest.

4. There is no infirmity in the orders, annexures "P-4" and "P-5". The same are in conformity with the provisions of the Act and the law laid down in various judgments of this Court.

Dismissed. No costs.