(1996) 06 KL CK 0037

In the High Court Of Kerala

Case No : Original Petition No''s. 11187 and 11190 of 1991, June 14, 1996.

P. M. MANUEL and Another APPELLANT

Vs

INCOME TAX OFFICER and Others RESPONDENT

Date of Decision : 14-06-1996

Acts Referred:
Income Tax Act, 1961 — Section 215, 217, 264, 273A

Citation : (1997) 137 CTR 625

Hon'ble Judges : S. Sankarasubban, J

Bench : Division Bench

Judgement

S. SANKARASUBBAN, J. :

Both the original petitions raise the same issue and hence they were heard together. The petitioners in both the original petitions are partners of a number of firms (to be exact of six firms). The income from the firms is the substantial income of the petitioners. They filed returns and paid advance tax under the IT Act (hereinafter called the Act), as per the accounts of the firms. The assessment years in question are 1983-84, 1984-85 and 1985-86. The assessment orders for the three years were passed on 25th March, 1987, 7th March, 1988 and 28th March, 1988. The firms were also assessed for the above years and it was found that the income returned filed by the firms, was not correct. Consequently, the income returned by the petitioners as income from the firms had to be changed. It was further found that the advance tax paid was less than 75 per cent of the assessed tax and so the AO levied interest under s. 215 of the Act for all the three assessment years. The petitioners filed separate petitions for waiver of interest under s. 215(4) of the Act for the above assessment years. Petitioners highlighted the fact that they could not anticipate the increase in the income at the time of filing the advance tax and that they were guided by the income statement given to them by the firms. These applications were considered by the Dy. CIT (Central Range), Ernakulam. The orders passed by the Dy. CIT is Ext. P7 in both the cases. In O. P. No. 11187/1991, the relevant portion of Ext. P7 is as follows :

"The main plea of the assessee is that he has mainly share income from various firms and the addition to the income of the firm was not anticipated. This contention is partially acceptable. However, I find that there is no case for full waiver of interest since the assessee has also not estimated the income for advance tax purposes correctly and completely. Taking the circumstances of the case into account, interest chargeable under s. 215 of the IT Act, for asst. yrs. 1983-84, 1984-85 and 1985-86 is reduced by 50 per cent. The Asstt. CIT, Central Circle, Ernakulam will pass suitable orders immediately."

In O. P. No. 11190/1991, the relevant portion of Ext. P7 is as follows :

"The petition for waiver of interest of the above assessment years has been considered in the light of r. 40(5) of the IT Act. After considering the circumstances of the case, I direct the assessee to pay 50 per cent of the interest charged under s. 215 of the IT Act, for the asst. yrs. 1983-84, 1984-85 & 1985-86. The balance interest is waived under r. 40(5) of the IT Act."

Thus the officer reduced interest by 50 per cent. Against the above orders, the petitioners filed revision under s. 264 of the Act before the third respondent. The CIT disposed of the petitions by Ext. P11 order dt. 21st Dec., 1990. The CIT refused to interfere since the second respondent had reduced interest under r. 40, cl. 5 of the IT Rules (hereinafter called the Rules). The original petitions are filed challenging Exts. P7 and P11 orders.

2. On behalf of the petitioners, Sri George George contended that both respondents 2 and 3 have not exercised the discretion vested in them under s. 215 cl. (4) r/w r. 40(5) of the IT Rules. He traced the fact that no reasons are given for not completely waiving the interest, especially, when Ext. P7 in O. P. No. 11187/1991, the Dy. CIT held that he was partially accepting the contentions of the assessee that his main share of income was from the firms and that the addition of the income of the firms was not anticipated.

He relied on the decisions reported in Patel Engineering Co. Ltd. Vs. C.B. Rathi and Another, ; MALAYALAM PLANTATIONS (INDIA) LTD. Vs. COMMISSIONER OF Income Tax., ; Commissioner of Income Tax Vs. Pratap Chand Maheshwari, , Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income Tax, and Sudhinendra Nath Patra Vs. Income Tax Officer, ''A'' Ward and Others,

3. Counsel for the Revenue contended that in passing of Exts. P7 and P11 orders, the authorities have exercised their discretion properly and the Court may not interfere under Art. 226 of the Constitution of India. He further contended that interest was levied as compensation for loss of realisation of the correct amount of advance tax in time. He even contended that the assessees were not entitled to the 50 per cent reduction given.

Sec. 215(4) of the Act reads as follows :

"In such cases and under such circumstances as may be prescribed, the AO may reduce or waive the interest payable by the assessee under this section."

With reference to s. 215(4) r. 40 has been framed. Rule 40 deals with waiver of interest. We are concerned with r. 40(5) which reads as follows :

"Any case in which the Dy. CIT considers that the circumstances are such that a reduction or waiver of the interest payable under s. 215 or s. 217 is justified."

The question that arises is whether the authorities have exercised their power in accordance with the above Rules.

4. If the discretion given to the authorities is not exercised properly on the facts of the case, this Court is entitled to interfere under Art. 226 of the Constitution. Similar question arose before the Supreme Court with respect to non-waiver of interest and penalty in exercising the power under s. 273A of the Act. In Apex Finance and Leasing Ltd. Vs. Commissioner of Income Tax, Delhi and Others, the Supreme Court held as follows :

"The question whether the CIT was justified on the facts and in the circumstances of the case, in refusing to exercise its power under s. 273A of the IT Act, 1961 to waive interest and penalty where the assessee has disclosed income voluntarily in a revised return, is a question to be examined on the merits and the High Court, on a writ petition challenging such a refusal ought not to dismiss the petition on the ground that the order was not liable to interference in exercise of its extraordinary jurisdiction."

In Patel Engineering Co. Ltd. vs. C. B. Rathi & Anr. (supra), a Division Bench of Gujarat High Court held :

"Where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out,............ the power ought to be exercised, and the Court will require it to be exercised (See Julius vs. Lord Bishop of Oxford (1880) 5 AC 214 (HL)."

Thus if the conditions laid down for the exercise of discretion are satisfied, the authority has no discretion to refuse to exercise the discretion. If there is omission to exercise the discretion on account of the failure on the part of the authority to genuinely address itself to the matter before it, mandamus can be issued directing such authority to rehear and determine the matter afresh according to law. The interpretation of s. 215 r/w r. 40 came up for consideration before a Division Bench of the Gujarat High Court in the above case and the Court decided to quash the order passed by the authorities and issued a direction to the authorities to grant waiver of interest. The Court interpreted the word "justified" in r. 40(5) as follows :

"The word "justified" is a word of wide import. Something could be said to be justified if it is proved or shown to be fair or right or according to justice or backed by sufficient reason."

5. Ext. P7 order passed by the Dy. CIT says that the contentions of the assessees are partially acceptable, nothing more is stated in that regard. The petitioners contention was that they paid the advance tax as per the information given to them with regard to that income by the firms. So at that time of paying the advance tax, they could not anticipate that the income disclosed by the firm was not correct. When it was found that the income disclosed by the firm was not correct, the petitioners had to pay more tax. This is a matter which the second respondent and the third respondent ought to have considered more objectively. From a reading of Exts. P7 and P11, it appears as though the officers were of the view that a person who has not paid the advance tax in accordance with the assessment and comes within the ambit of s. 215 has to pay interest, they forgot the purposes for which s. 215(4) was enacted and also the conditions mentioned in r. 40(5). They have to objectively consider the circumstances and find out whether the assessees are entitled to it. There should not be a mechanical consideration of the claim put forward by the assessee and it should not be that if some benefit is given to the assessee, he will be satisfied. From the assessment orders, it is clear that nearly more than 95 per cent of the income of the assessees are from the firms. So if as a matter of fact, they bona fide paid the advance tax as per the accounts given to them from the firm, they should not be penalised with interest if it is subsequently found that their income was high. This is a matter which the authorities should have taken into consideration.

6. Thus while maintaining the 50 per cent reduction to the assessees as per Exts. P7 and P11, I direct the second respondent to consider afresh as to whether the petitioners are entitled to waiver of the entire interest levied on them under s. 215 of the Act.

Original Petitions are allowed as indicated above.