

(2003) 11 GUJ CK 0042

In the Gujarat High Court

Case No : Special Civil Application No's. 11870, 13303, 14063 and 14062 of 2003

Paras Bansilal Patel

APPELLANT

Vs

B.M. Jindel or his Successor in Office

RESPONDENT

Date of Decision : 21-11-2003

Acts Referred:

Income Tax Act, 1961 — Section 119, 234A, 234B, 234C

Citation : (2004) 187 CTR 613 : (2004) 267 ITR 108

Hon'ble Judges : K.A. Puj, J;Anil R. Dave, J

Bench : Division Bench

Advocate : Swati Soparkar and B.B. Naik, in Special Civil application No. 11870 and 13303 of 2003, for the Appellant; Swati Soparkar and B.T. Rao in Special Civil Application No. 14063 and 14065 of 2003, for the Respondent

Final Decision : Allowed

Judgement

A.R. Dave, J.—As the issues involved in each of the petitions are the same, all the petitions are heard and decided together by this common judgment.

2. RULE. Service of rule is waived by learned Standing Counsel Shri B.B. Naik in Special Civil Applications Nos. 11870/03 and 13303/03 and by learned Standing Counsel Shri B.T. Rao in Special Civil Applications Nos. 14063/03 and 14065/03. At the request of the learned advocates, the petitions are finally heard today.

3. In all these petitions the petitioners have been aggrieved by an order dated 9.12.2002 passed by the respondent, whereby the respondent-the Chief Commissioner of Income Tax, Surat, had not waived interest, which was charged under the provisions of sec. 234A of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

4. The facts giving rise to the petitions, in a nutshell, are as under :

4.1 The petitioners had to file their returns of income before 31.10.1991 for the Assessment Year 1991-92. The petitioners had not filed their returns before the

last date for filing their returns. On 19.5.1992, search and seizure operations had taken place and the books of accounts of all the petitioners had been seized by the Income Tax authorities. As the petitioners had not filed their returns of income, a request was made to the concerned authority by letter dated 26.6.92 for returning the books of accounts or copies thereof so as to enable the petitioners to get the accounts audited and file the returns as soon as possible. In pursuance of the said request, relevant copies of the books of accounts had been returned to the petitioners in the month of October 1992. Upon getting the same, the accounts had been audited in the month of March 1993 and ultimately all the petitioners, except the petitioner of Special Civil Application No. 14065/03, filed their returns in March, 93. In case of the petitioner of Special Civil Application No. 14065/03, as the books of accounts were not required to be audited, the return was filed on 31.10.1992.

4.2 As the returns had been filed late, when the assessment orders were made, the Assessing Officer had levied penal interest under the provisions of sec. 234A of the Act.

4.3 On 21.5.96, the Central Board of Direct Taxes had issued instructions to all the Chief Commissioners of Income Tax and Directors General (Investigation) under Circular No. 400/234/95-IT(B) dt. 23.5.96 to reduce or waive penal interest charged under the provisions of sec. 234A, 234B and 234C of the Act in certain cases. By virtue of the said circular, the Chief Commissioners and Directors-General (Investigation) have been empowered to reduce or waive penal interest in certain circumstances. Relevant clause of the said circular for the purpose of the petitioners is as under :

"(i) Where, in the course of search and seizure operations, books of account have been taken over by the Department and were not available to the taxpayer to prepare his return of income;

(ii)"

4.4 Upon knowing the fact that the Chief Commissioner of Income Tax has been empowered to reduce or waive penal interest charged u/s 234A of the Act, the petitioners had submitted applications for waiver of interest under the provisions of sec. 119(2)(a) to the respondent. The said applications were filed somewhere in 1997.

4.5 In pursuance of the applications for waiver of interest, after hearing the concerned parties, the respondent passed the impugned order on 9.12.2002, whereby the applications for waiver of interest have been rejected because the last date for filing the returns was 31.10.1991 and till that date the returns had not been filed by the petitioners. The search and seizure operations had taken place on 19.5.1992, that is, much after the last date on which the returns ought to have been filed. Looking to the said fact, the respondent came to the conclusion that there was no justifiable reason for waiving the interest in pursuance of the circular referred to hereinabove.

5. Sr. Advocate Shri S.N. Soparkar appearing for the petitioners has submitted that the impugned order passed by the respondent is neither just nor legal. According to him, though the petitioners had not filed their returns on or before 31.10.91, the date by which the returns ought to have been filed, the petitioners were definitely prevented from filing the returns as their books of accounts had been seized on 19.5.92 as a result of the search and seizure operations, which had taken place on that day. According to him, even if the petitioners wanted to file the returns, they could not have filed the same in absence of the books of accounts. In pursuance of the applications submitted by the petitioners for return of the books of accounts, copies of the books of accounts were given to the petitioners in October, 92. It is his case that as the books of accounts or copies thereof were not with the petitioners during the aforesaid period, it was impossible for the petitioners to file the returns and, therefore, the petitioners cannot be saddled with any liability to pay interest under sec. 234A of the Act in respect of the said period. It has been submitted by him that immediately upon getting the copies of the books of accounts, the returns had been filed. In one case the return had been filed immediately as the accounts were not required to be audited, whereas in other cases, where the accounts were required to be audited, the returns were filed in the month of March, 1993.

6. For the reasons stated hereinabove, it has been submitted by him that at least for the period during which the books of accounts were in custody of the Income Tax authority, the petitioners should not be saddled with the liability to pay interest. It has been also submitted by him that in fact an appropriate application for getting the copies of the books of accounts had been submitted in the month of June 1992. In spite of the said fact, the copies of the books of accounts were furnished to the petitioners only in October, 1992. It has been further submitted by him that even after getting the accounts, reasonable time was required for the purpose of getting the books of accounts audited and returns filed and, therefore, for some more period interest should not have been levied.

7. It has been thus submitted by the learned Sr. Advocate that the impugned order deserves to be quashed and set aside and the interest, which has been already paid by the petitioners in pursuance of the assessment orders, must be refunded to the petitioners.

8. On the other hand, learned Standing Counsel Shri B.B. Naik appearing for the respondent has tried to justify the impugned orders passed by the respondent. It has been submitted by him that the petitioners were absolutely careless in the matter of filing returns. According to him, it is an admitted fact that the books of accounts had not been seized before the last date for filing the returns. In the circumstances, it has been submitted by him that the amount of interest payable u/s 234A of the Act cannot be waived. It has been submitted by him that the search and seizure operations or seizure of the books of accounts cannot be looked into for the reason that the date on which the search had taken place is subsequent to the last date on which the returns were required to be filed. He

has also submitted that no application for return of the books was submitted by the petitioners but somebody else had submitted an application for return of the books of accounts.

9. We have heard the learned advocates at length.

10. It is not in dispute that the books of accounts belonging to the petitioners had been seized on 19.5.92 as a result of the search and seizure operations, which had taken place on that day. It is also not in dispute that the copies of the books of accounts were given to the petitioners in October, 1992 though a request was made for getting the books of accounts or copies thereof in the month of June, 1992.

11. In our opinion, though the search and seizure operations had taken place on 19.5.92, i.e., after the last date on which the returns were required to be filed, the petitioners should get the benefit under the circular referred to hereinabove. It cannot be disputed that during the period when the books of accounts were in the custody of the Income Tax authorities, the petitioners could not have filed their returns.

12. The reason behind issuance of the circular in question is to give relief to an assessee, who could not file his return for the reasons beyond his control. It is true that in the instant cases, the petitioners did not file their returns before the last date for filing the returns. But even thereafter, they could not file the returns from 19th May, 1992 till October, 1992 as they were not having the books of accounts, which had been seized by the Income Tax authorities. The policy laid down in the circular clearly shows that when, in the course of search and seizure operations, the books of accounts have been taken away by the department and the books of accounts or copies thereof are not made available to the taxpayer to prepare his return of income, the Chief Commissioners and Directors General (Investigation) are empowered to reduce or waive the penal interest. In the instant case, it cannot be disputed that the books of accounts were not available to the taxpayers for certain period and during that period the petitioners could not have filed the returns. In our opinion, the submission of the learned counsel appearing for the respondent is not just and proper when he says that the circular referred to hereinabove would not apply in the case of the petitioners simply because the books of accounts had been seized after the last date for filing the returns.

13. Looking to the fact that the petitioners, even if they had desired to file the returns during the period when the books of accounts were in the custody of the concerned Income Tax authorities, they could not have filed the returns and, therefore, that was one of the factors contributing to the delay caused in filing the returns and, therefore, the petitioners should not be saddled with the liability to pay penal interest u/s 234A of the Act for the period during which the books of accounts were in the custody of the Income Tax authorities.

14. It is not in dispute that the petitioners had not filed the returns upto 19.5.92,

the day on which the search and seizure operations had taken place. The petitioners must pay interest for the period commencing after the last date for filing returns till 18.5.92 because it was their fault that they did not file the returns during that period. Moreover, it is not in dispute that by the end of October, 1992 copies of the books of accounts had been furnished to the petitioners. Thus, after getting copies of the books of accounts, there was no justifiable reason for not filing the returns immediately. In our opinion, the period during which the books of accounts had been actually seized by the Income Tax authorities should be the period for which the petitioners should be given relief in the matter of payment of interest u/s 234A of the Act, as the petitioners could not have filed their returns even if they wanted to file the same. In the instant case, however, the petitioners were supplied copies of their books of accounts and not the books of accounts.

15. Looking to the facts and circumstances of the case, it is directed that the payment of interest in respect of the period commencing from 19.5.92 till the date on which the copies of the books of accounts had been given to the petitioners, shall be waived by the respondent. The impugned orders passed by the respondent are quashed and set aside to that extent. The Assessing Officer shall calculate the amount of interest now payable by the petitioners after giving effect to this order and the excess amount of interest collected from the petitioners shall be returned to the petitioners as soon as possible.

The petitions are thus allowed. Rule is made absolute to the above extent in each of the petitions with no order as to costs.