(1984) 05 KL CK 0004

In the High Court Of Kerala

Case No : O.P. No''s. 7266 of 1981, 3862 and 3869 of 1982

Paul Abrao and Sons APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 31-05-1984

Acts Referred:

Constitution of India, 1950 — Article 14
Income Tax Act, 1961 — Section 139, 139(8), 139(8)(a), 144, 154

Citation : (1984) 19 TAXMAN 388

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

Bench : Single Bench

Advocate : M. Pathrose Mathai and P.C. Chacko, for the Appellant; P.K. Raveendranatha Menon, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Paripoornan, J.—Three different firms have filed the above three original petitions. They seek a declaration to the effect that Explanation 2 to section 139(8)(a) of the income tax Act, 1961 (''the Act''), insofar as it provides that in the case of a registered firm, for delayed filing of the return, for levying interest, the tax payable on the total income shall be the amount of tax which would have been payable if the firm had been assessed as an unregistered firm, is violative of article 14 of the Constitution of India and is unconstitutional and void. The consequential assessment orders imposing interest on such basis are also attacked. u/s 139, every person, whose total income during the previous year exceeded the maximum amount which is not chargeable to income tax, shall furnish a return of his income in the prescribed manner within the time stipulated therein. A firm is also bound to comply with such requirements. One of the consequences for not filing the return within the specified date is the liability to pay interest specified u/s 139(8)(a). Section 139(8)(a) and the Explanations provide as follows: " (a) Where the return under sub-section (1) or sub-section (2) or sub-section (4) for an assessment year is furnished after the specified date, or is not furnished, then whether or not the income tax Officer has extended the date for furnishing the return under sub-section (1) or sub-section (2), the assessee shall be liable to pay simple interest at twelve per cent per annum, reckoned from the day immediately following the specified date to the date of the furnishing of the return or, where no return has been furnished, the date of completion of the assessment u/s 144, on the amount of the tax payable on the total income as determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source:

Provided that the income tax Officer may, in such cases and under such circumstances as may be prescribed, reduce or waive the interest payable by any assessee under this sub-section. Explanation 1 : For the purposes of this subsection, ''specified date'', in relation to a return for an assessment year, means,-

(a) in the case of every assessee whose total income, or the total income of any person in respect of which he is assessable under this Act, includes any income from business or profession, the date of the expiry of four months from the end of the previous year or where there is more than one previous year, from the end of the previous year which expired last before the commencement of the assessment year, or the 30th day of June of the assessment year, whichever is later;

(b) in the case of every other assessee, the 30th day of June of the assessment year.

Explanation 2 : For the purposes of this subsection, where the assessee is a registered firm or an unregistered firm which has been assessed under clause (b) of section 183, the tax payable on the total income shall be the amount of tax which would have been payable if the firm had been assessed as an unregistered firm.

(b) Where as a result of an order u/s 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 264, the amount of tax on which interest was payable under this sub-section has been reduced, the interest shall be reduced accordingly, and the excess interest paid, if any, shall be refunded."

The counsel for the petitioners contend that for the failure to file the return within the specified time and in levying the interest u/s 139(8)(a), read with Explanation 2, the ITO estimated the tax payable by the petitioners, as if the petitioners were assessed as an unregistered firm and levied interest on such notional basis. This has been so done, though the petitioner is a registered firm, and is entitled to the benefits of the Act as a registered firm. Explanation 2 to section 139(8)(a) is attacked as arbitrary, unjust and discriminatory and as violative of article 14. 2. The counsel for the revenue contended that Explanation 2 to section 139(8)(a) is perfectly valid and is not open to any attack, as con tended by the petitioners.

3. It is common knowledge that a firm can carry on business even without registration under the Act. The benefit of registration is given by the Act to firms which will benefit them by levy of lower rates of tax. In the absence of registration, the whole income of the firm will be charged as a unit of assessment. In affording the benefit of registration and the consequential lower rates of tax, the Legislature thought it fit to impose a condition to the effect that if the firm delays the filing of the return, the basis for levying the interest u/s 139(8) should be on the basis of the tax payable on the total income, as if the firm has been assessed as an unregistered firm. It does not appear that the Legislature was incompetent or acted arbitrarily in enacting such a provision. The benefit of registration was afforded to firms with certain conditions or only in case they fulfil certain requirements enjoined by the statute. This, the Legislature was competent to enact, seems to be obvious. It is settled law that in matters of taxation, the Court permits a greater latitude to the discretion of the Legislature. In tax matters, the State is allowed to pick and choose districts, objects, persons, methods and even rates for taxation, if it does so reasonably- Khandige Sham Bhat and Others Vs. The Agricultural Income Tax Officer, , Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam, and Ganga Sugar Corporation Ltd. and Others Vs. State of Uttar Pradesh and Others, .

4. Section 271(2) of the Act is to the following effect:

"271. Failure to furnish returns, comply with notices, concealment of income, etc.
(1) * * *

(2) When the person liable to penalty is a registered firm or an unregistered firm which has been assessed under clause (b) of section 183, then, notwithstanding anything contained in the other provisions of this Act, the penalty imposable under sub-section (1) shall be the same amount as would be imposable on that firm if that firm were as unregistered firm."

(Emphasis supplied)

The question arose as to whether the said provision is violative of article 14. In Jain Bros. and Others Vs. Union of India, , a Division Bench of the Delhi High Court repelled the contention and said:

"... It is urged that in the case of assessees other than registered firms the maximum penalty cannot exceed in the aggregate fifty per cent of the tax of the assessee, while in the case of registered firms the maximum penalty is not linked with the tax assessed on the registered firms. On the contrary, it is provided, the penalty imposable on a registered firm shall be the same as would be imposable on that firm if that firm were an unregistered firm. The registered firms are thus stated to have been discriminated against, and it is urged that this is violative of article 14 of the Constitution. There is no force in the above contention. It is well established that a firm is a compendious name of the partners constituting it. For the purpose of the income tax Act, a registered firm has, however, been treated as an entity liable to tax. Although the Legislature has provided a special reduced rate of tax for the registered firms, in the matter of penalty the Legislature has directed that the penalty imposable on a registered firm shall be the same amount as would be imposable on that firm if that were an unregistered firm. We are unable to subscribe to the view that the above provision contravenes article 14of the Constitution. There can be nothing to prevent the Legislature from giving the benefit of a reduced rate to a registered firm for the purpose of tax but not in the matter of penalty."

(Emphasis supplied)

This decision was affirmed by the Supreme Court in the decision in Jain Bros. and Others Vs. The Union of India (UOI) and Others, . Grover, J., speaking for the Constitution Bench, observed:

"Lastly, the challenge to section 271(2) of the Act of 1961 on the ground of contravention of article 14 may be considered. According to that provision when the person liable to penalty is a registered firm then notwithstanding anything contained in the other provisions of the Act of 1961, the penalty imposable under subsection (1) shall be the same amount as would be imposable on that firm if that firm were an unregistered firm. It is pointed out that in the case of assessees other than registered firms the maximum penalty imposable u/s 271(1)(i) cannot exceed in aggregate 50 per cent of the tax payable by the assessee; whereas in the case of a registered firm the maximum penalty is not made to depend upon the tax assessed on or payable by such firm. On the contrary the registered firm will have to pay the same penalty as an unregistered firm which may far exceed the maximum limit of 50 per cent prescribed by the above provision. This, according to the appellants, constitutes discrimination under article 14 of the Constitution. Now a firm when registered is treated as a separate entity liable to tax. After 1956 it has to pay tax at a special reduced rate. If a firm got itself registered the partners were entitled to certain benefits and advantages. It was, however, open to the Legislature to say that once a registered firm committed a default attracting penalty, it should be deemed or considered to be an unregistered firm for the purpose of its imposition. No question of discrimination under article 14 can arise in such a situation. We fully share the view of the High Court that there was nothing to prevent the Legislature from giving the benefit of a reduced rate to a registered firm for the purpose of tax but withhold the same when it committed a default and became liable to imposition of penalty."

(Emphasis supplied)

In my opinion, the same reasoning will apply even with regard to levy of interest and in considering the vires of Explanation 2 to section 139(8)(a).

5. There is divergence of judicial opinion regarding the validity of Explanation 2 to section 139(8)(a). The Karnataka High Court in M. Nagappa and Others Vs. Income Tax Officer, Central Circle I, Bangalore and Others, and in Addl. Commissioner of Income Tax, Mysore and Others Vs. Mahadeshwara Lorry

Service, held the said provision, Explanation 2 to section 139(8)(a), to be violative of article 14. On the other hand, the Madras High Court in Mahendrakumar Ishwarlal and Co. and Others Vs. Union of India (UOI) and Others, , the Gauhati High Court in Ganesh Das Sreeram Vs. Income Tax Officer, "A" Ward and Others, , the Gujarat High Court in Chhotalal and Co. Vs. Income Tax Officer, Morvi and Others, , the Madhya Pradesh High Court in Jiwanmal Hospital Vs. Income Tax Officer (Assessment II), , the Punjab & Haryana High Court in Hindustan Steel Forgings Vs. Commissioner of Income Tax, and the Calcutta High Court in Mohanlal Soni Vs. Union of India (UOI) and Others, held that the aforesaid provision is not discriminatory or void. In a common judgment rendered in O.P. No. 6499 of 1981 (J), O.P. No. 3703 of 1982 (K), and O.P. No. 3805 of 1982 (M), dated 24-4-1984, wherein the identical question came up for consideration, my learned brother, Justice Dr. T. Kochu Thommen, dissented from the view expressed by the Karnataka High Court and cited with approval the decisions of the other High Court referred to hereinabove. I also share the same view. In view of the preponderance of judicial opinion on the point, expressed by the various High Courts, I hold that Explanation 2 to section 139(8)(a) is not ultra vires of article 14 nor discriminatory or arbitrary, as contended by the petitioners. The only contention urged by the petitioners is without force.

The original petitions are dismissed. There shall be no order with regard to costs.

