**(1998) 05 RAJ CK 0011**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No''s. 1186 of 1993 and 3450 of 1994

Rajasthan Communication Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

**Date of Decision :** 06-05-1998

**Acts Referred:**

Income Tax Act, 1961 — Section 273, 273A

**Citation :** (2000) 162 CTR 349 : (2000) 244 ITR 636 : (1999) 2 RLW 1268 : (2000) 113 TAXMAN 1

**Hon'ble Judges :** J.C. Verma, J

**Bench :** Single Bench

**Advocate :** Mahendra Singh, for the Appellant; Anant Kasliwal, for the Respondent

## Judgement

J.C. Verma, J.—The petitioner, namely, Rajasthan Communications Limited, is a Government undertaking". Like any other assessee, the petitioner was required to file the Income Tax returns. The petitioner did file the Income Tax return for the year 1988-89 which was scrutinised and ultimately the petitioner was burdened with tax of Rs. 13,77,878. The petitioner deposited a total amount of Rs. 12,45,339 out of the tax and interest demanded as per the demand notice. Under the provisions of Section 273A(1) Clauses (i) and (iii) read with Clause (c), the petitioner had applied for waiver of the interest vide his application dated February 5, 1990, which application is attached as annexure-3 with the writ petition. It has been stated by the petitioner that because of circumstances beyond its control and because of certain financial strains, there was certain lapse on the part of the petitioner and a request was made to deposit the additional tax in instalments. It was further stated in annexure-2 that because of facing a tremendous financial strain, it was not finding it possible to fulfil the business commitments, because of the reason that the company had suffered heavily due to negligent manipulation and fraud committed by its ex-financial controller, the company had been put into loss. The company had narrated the circumstances and the reasons for filing the revised Income Tax return and had prayed for waiver of the interest of the amount in regard to three counts, i.e., Rs. 82,800 u/s 139(8), Rs. 1,84,585 u/s 215/217 and an amount of Rs. 6,657 u/s 216 of the Income Tax Act. It is true that the company had given reasons for filing the revised tax return and because of those reasons mentioned therein, the company was seeking the waiver of the total amount of interest levied on the company as is clear from the reading of annexure-3.

2. The Commissioner of Income Tax, vide annexure-5 rejected the request of the petitioner, by noting the fact that against the demand of Rs. 13,77,878 made from the petitioner towards the tax and interest, the petitioner had only deposited an amount of Rs. 12,45,399 and thus an amount of Rs. 1,31,254 still remained payable by the company. The Commissioner was of the opinion that the strict requirements of Section 273A were not complied with.

3. Section 273A authorises the Commissioner to reduce or waive the amount of interest paid or payable under various sections or the penalty imposed or imposable u/s 273 if the Commissioner is satisfied that such person has fully co-operated and has made the disclosure of the income and has paid the tax on the income so disclosed and has either paid or made satisfactory arrangement 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. Section 273A reads as under :

"273A. Power to reduce or waive penalty, etc., in certain cases.--(1) Notwithstanding anything contained in this Act, the Chief Commissioner or Commissioner 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 Clause (i) of Sub-section (1) of Section 271 for failure, without reasonable cause, to furnish the return of total income which he was required to furnish under Sub-section (1) of Section 139 ; or

(ii) reduce or waive the amount of penalty imposed or imposable on a person under Clause (iii) of Sub-section (1) of Section 271 ; or

(iii) reduce or waive the amount of interest paid or payable under Sub-section (8) of Section 139 or Section 215 or Section 217 of the penalty imposed or imposable u/s 273,

if he is satisfied that such person-

(a) in the case referred to in Clause (i), has, prior to the issue of a notice to him under Sub-section (2) of Section 139, voluntarily and in good faith made full and true disclosure of his income ;

(b) in the case referred to in Clause (ii), has, prior to the detection by the Assessing Officer, 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 Clause (iii), has, prior to the issue of a notice to him under Sub-section (2) of Section 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 u/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 Clauses (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."

4. Once a demand has been made and the assessee has been assessed for payment of tax including the interest, such total demand does fall in the definition of tax imposed. The contention of the petitioner that it had deposited the tax but could not deposit the part of interest, and therefore, it is to be deemed that it had complied with the condition of depositing the tax or interest payable cannot be accepted. However, it is an admitted fact that before making application for waiver or reducing the interest, the petitioner had not paid the interest nor had made any satisfactory arrangement for such deposit. The contention of the petitioner that because of the reason that the petitioner is a State undertaking attached to RIICO and the State of Rajasthan owns majority of the shares, this fact itself be considered as an adequate arrangement as required under the law may not be acceptable.

5. The facts of Civil Writ Petition No. 3450 of 1994 the above said writ petition arise out of the same facts as mentioned in the Writ Petition No. 1186 of 1993. The petitioner was informed vide annexure-4, dated September 15, 1992, to send intimation to the Commissioner whether the balance amount of Rs. 1,31,254 had been deposited or not. The petitioner-assessee had informed vide annexure-6 letter dated July 14, 1993, after number of correspondence, that the excess amount, even than due, stood deposited, i.e., the assessee had deposited an amount of Rs. 1,00,000 vide cheque No. 283241 dated February 25, 1993, and another amount of Rs. 1,00,000 vide cheque No. 283584 dated March 19, 1993. It was brought to the notice of the Commissioner that the excess payment has been made and thus waiver application be reconsidered.

6. The Deputy Commissioner of Income Tax vide its letter dated ]uly 27, 1993, while passing the order u/s 154 of the Income Tax Act had observed that even the calculation of interest (up to that date) has been wrongly made and the assessee was entitled to refund of interest deposited. It was pointed out by the assessee vide annexure-8 that the requirement of Section 273A already stood complied with and, therefore, his case for waiver be decided. The Commissioner of Income Tax vide anneuxre-11 dated February 18, 1994, had observed that the waiver application already stood rejected on November 25, 1992, and, therefore, the petition for the same year had already been disposed of and as such another petition for, waiver on whatever circumstance is not maintainable and ultimately

vide annexure-12 dated February 25, 1994, the waiver of interest u/s 220(2A) of the Income Tax Act had been rejected. These two orders are being challenged by the petitioner.

7. While exercising powers u/s 273A of the Income Tax Act, the Commissioner did observe in the order dated November 25, 1992, that because of the reason that it has not been mentioned that any satisfactory arrangement for the remaining amount to pay tax had been made, but in the circumstances and in view of the fact that the petitioner-company was a public undertaking and attached with RIICO, it would have been advisable for the Commissioner to direct the petitioner to furnish some guarantee instead of totally dismissing the petition. In the circumstances where no such guarantee or arrangement has been given by way of inadvertence omission or otherwise, it shall be appropriate in the interest of justice that the authorities concerned should give at least one chance to the parties concerned to make arrangements if the circumstances so required: In the present case, it was a fit case where the Commissioner ought to have asked the petitioner to make arrangements for guarantee if the petitioner wanted that its request be entertained.

8. The Commissioner instead of dismissing the waiver application straightaway should have asked the petitioner to make arrangements for furnishing any guarantee or take any other step to the satisfaction of the authorities.

9. In my opinion declining to exercise the powers conferred u/s 273A of the Income Tax Act are not to be mechanically applied. Of course, it is required of such assessee to satisfy the conditions of making adequate arrangement for payment of tax, but in case there is any omission to do so because of any of the reasons the application is not to be dismissed mechanically or summarily and the Commissioner is supposed to apply his mind and in case there is any default of non-compliance the assessee should be informed that his application for waiver can only be considered if the assessee complies with the provisions of law in reasonable time and an opportunity to that extent is required to be given to such an assessee.

10. In Writ Petition No. 3450 of 1994 the Commissioner had not applied his mind and has not appreciated the situation properly. The assessee had categorically stated that he had deposited more amount than required or demanded. To dismiss the application of waiver or not to consider the application of waiver on the ground that he had already passed such an order on the merits was totally an illegal order. As a matter of fact, by the impugned order in S. B. Civil Writ Petition No. 1186 of 1993 the merits of waiver were not considered at all, but had been dismissed because of non-compliance with certain provisions of Section 273A of the Income Tax Act. In any case, if those provisions of Section 273A have been complied with fully or partially, it was fit case where the Commissioner ought to have decided the matter on the merits.

11. For the aboveaid discussions, in my opinion, the Commissioner has not

 

exercised his jurisdiction rightly. I quash the impugned orders in both the writ petitions, i.e., order dated November 25, 1992, in Writ Petition No. 1186 of 1993 and annexures 11 and 12 dated February 18, 1994, and February 25, 1994 in Writ Petition No. 3450 of 1994 with a direction that the Commissioner shall decide the waiver application afresh as if the provisions of Section 273A in regard to the arrangement stood complied with because of subsequent deposit of amount by the assessee. No orders as to costs.