(1994) 05 KL CK 0018

In the High Court Of Kerala

Case No : O. P. No. 10838 OF 1989-M., MAY 24, 1994.

RAMACHANDRAN AND CO. APPELLANT

Vs

Income Tax OFFICER AND ANOTHER. RESPONDENT

Date of Decision : 24-05-1994

Acts Referred:
Income Tax Act, 1961 — Section 138, 139, 143, 215, 216

Citation : (1994) 120 CTR 304 : (1994) 209 ITR 982

Hon'ble Judges : T. L. Viswanatha Iyer, J;T. L. Vishanatha Iyer, J

Bench : Division Bench

Judgement

T. L. VISWANATHA IYER J. - The petitioner, which is a firm, was doing business as abkari contractors during the accounting year ending March 31, 1984. The return for purposes of the Income Tax Act, 1961 ("the Act"), for the corresponding assessment year 1984-85 was due on July 31, 1984, but the petitioner sought for extension of time till March 31, 1985, and filed the return one year later on March 31, 1986, disclosing a total income of Rs. 4,43,370. The Income Tax Officer started investigation on receipt on the return and called for various details and particulars from the petitioner by his letter, exhibit R-1(a), dated December 1, 1986. While the proceedings were thus going on, the petitioner purported to take advantage of the Amnesty Scheme of 1985 and filed a revised return disclosing a total income of Rs. 8,39,810 for the year. That was on March 12, 1987. The Income Tax Officer was not, however, satisfied with this return as he was of opinion that the petitioner had disclosed a lesser value for the arrack sold by it during this year than in the previous year, and for other reasons. He made addition to the total income returned, besides disallowing certain items of expenditure claimed. The taxable income for the year was thus determined at Rs. 15,58,078 by the order, exhibit P-1, dated April 1, 1987. Apart from demanding tax on this income, a demand was also made for Rs. 2,46,102 by way of interest u/s 139(8) Rs. 1,53,634 as interest u/s 215 and Rs. 344 by way of interest u/s 216.

The petitioner challenged this order in appeal and simultaneously applied by exhibit P-4 dated May 4, 1987, to the Income Tax Officer for waiver of the interest demanded. The Income Tax Officer rejected this request for waiver of interest by his reply, exhibit P-5, dated May 15, 1987, on the ground that the partners of the petitioner firm had not made corresponding disclosures and payment of tax. The petitioner carried this order (in so far as it related to the interest under sections 138(8) and 215 in revision before the Commissioner of Income Tax by the revision petitions, exhibits P-6 and P-7.

In the meanwhile, the appeal filed by the petitioner against the order of assessment was allowed substantially deleting the addition to the income and confining the disallowance to an amount of Rs. 50,000. The taxable income was thus fixed at Rs. 8,91,217. The appellate order was implemented by the proceedings, exhibit P-3, by which the demand for interest was scaled down to Rs. 1,35,88 u/s 139(8), Rs. 75,306 u/s 215 and Rs. 344 u/s 216.

The revision petitions, exhibits P-6 and P-7, were thereafter disposed of by the Commissioner by the order, exhibit P-8, dated February 15, 1989. The petitions were dismissed. The Commissioner stated :

"The assessees argument cannot be accepted for several reasons. Though the assessee filed its original return itself on March 31, 1986, when the Amnesty Scheme was in force, it did not choose to disclose its full income and it filed a revised return on March 12, 1987, only after the Income Tax Officer made enquiries. Actually, the Income Tax Officer did not accept even this revised return u/s 143(1) as is normally done in the Amnesty Scheme. Instead, he made further enquiries and made an order u/s 143(3) enhancing the total income to a much higher figure of Rs. 15,58,080. Even the Commissioner of Income Tax (Appeals) sustained an addition to the extent of Rs. 50,000. The assessee, therefore, does not satisfy the conditions of the Amnesty Scheme.

The assessee also could not explain the reasons for the delay in the submission of the return and the reasons for the under-estimation of advance tax. It also could not explain the reasons for deferment of instalments of advance tax. For all these reasons, I am dismissing the assessees revision petition."

The petitioner has no case that it is entitled to any waiver by virtue of rules 40 and 117A of the Income Tax Rules, 1962. The reliance is only on the fact that a return was filed purporting to be under the Amnesty Scheme and, therefore, no interest may be charged. This contention does not stand scrutiny for the reasons that the return for the year was due on July 31, 1984, extension was sought till March 31, 1985, and the return was filed one year later on March 31, 1986. This return admittedly did not disclose the income truly or fully. It was only after the investigation started and the process of assessment was going on that the revised return purporting to be under the Amnesty Scheme was filed on March 12, 1987. Even this return was not accept and eventually after the order in appeal, the taxable income stood enhanced by an amount of Rs. 50,000. The

Amnesty Scheme postulates a voluntary and true disclosure of this income by an assessee for the benefits thereof being give to him. In this case, the revised return was evidently prompted by the investigation that was going on and was made almost on the even of completion of the assessment, namely, on March 12, 1987, the date of assessment being April 1, 1987. The return so filed was neither true nor complete as evident from the enhancement of the taxable income by Rs. 50,000 even per the appellate order, which the petitioner accepted and did not challenge in further appeal. The revised return was thus not a true return and, therefore, the petitioner became disentitled to the benefits of the Amnesty Scheme. I am in agreement with the reasoning of the Commissioner on this point in the order, exhibit P-8.

The Commissioner was, therefore, justified in dismissing the revision petitions, exhibits P-6 and P-7. I must also note here that the primary benefit under the Amnesty Scheme is exoneration from penalty. What is charged under exhibits P-1 and P-3 is interest accruing consequent on the delay on the part of the petitioner itself, and not penalty.

In this view of the matter, the clarifications made by the Central Board of Direct Taxes in reply to questions Nos. 19 and 21 in Circular No. 451, dated February 17, 1986 [1986] 158 ITR 135, do not have any relevance and do not require consideration.

Counsel for the petitioner, however, raised a question of jurisdiction with the contention that the Commissioner had dismissed the revision petitions on a new ground different from that taken by the Income Tax Officer in his order, exhibit P-5. This is stated to be unjustified by virtue of the decision of this court in Commissioner of Income Tax Vs. Chandrika Educational Trust, . I do not find any substance in this contention. That was a case falling u/s 263 and in that context it was observed that the order of the Commissioner can be sustained by the Appellate Tribunal only on the grounds stated therein and not on others, as otherwise the Tribunal will be virtually usurping a jurisdiction which is exclusively that of the Commissioner. That is not the case here where it is the assessee who approached the Commissioner in revision u/s 264. It was then open to the Commissioner to sustain the order impugned on any of the grounds available to him to sustain it. I overrule this contention.

The original petition is, therefore, without merit. It is dismissed. No costs.

