
(2009) 04 BOM CK 0088
In the Bombay High Court

Sandeep M. Shah

APPELLANT

Vs

V.D. Wakharkar and Another

RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Income Tax Act, 1961 — Section 139, 143, 148, 215, 217

Citation : (2009) 319 ITR 359 : (2009) 319 ITR 259

Hon'ble Judges : J.H. Bhatia, J;F.I. Rebello, J

Bench : Division Bench

Judgement

1. The brief point involved in these matters is whether the Commissioner was justified in refusing waiver of interest u/s 139(8) and Section 217 of the Income Tax Act while for the same reasons the penalty was waived.

2. To state in brief, Writ Petition No. 888 of 1994 is filed by M/s Sun & Deep Jewellers, which is a partnership firm and other two petitions are filed by the partners thereof. Admittedly, the partnership firm and the partners filed their respective Income Tax returns for the assessment years 1987-88 and 1988-89 on 7-2-1990. Therefore, it is clear that the Income Tax returns were submitted long after the due date. The assessee filed the returns making their own assessment of income and deposited the Income Tax accordingly. The assessing officer reported that the assessments were completed u/s 143(1) accepting the income returned by the assessee for both the years. Interest u/s 139(8) and u/s 217 was charged for both the assessment years. Similarly, the penalty was also levied u/s 271(1)(a) and u/s 273 for both the years. According to the firm, firstly, it was preoccupied with matters relating to past assessments, appeals, prosecution, notices and various other issues were raised by the IT department. Secondly, the petitioners did not have all the material relevant to file returns of income to properly estimate liability of advance tax as the books of accounts were seized by the Income Tax Department on 31-1-1983 and were not yet returned and thirdly, one Mr. Jitubhai, who was looking after the accounts had left this firm and therefore finalisation of books was delayed. According to the

petitioners, who are partners of the firm, they had no income except the income from the firm and as the accounts of the firm were not finalised they could not estimate their income and file returns in time. These reasons for not filing the returns were accepted by the Central Board of Direct Taxes and it was communicated to the Commissioner by their letter dated 12-2-1993 and, therefore, the penalty levied for both the years was waived. However, the Commissioner refused to waive the interest charged for both the assessment years. It appears that the application for review by the firm was also rejected on the same grounds. According to the Commissioner, the petitioners were expected to deposit the Income Tax within time and because of the delay on their part, the government has been deprived of those taxes within time and, therefore interest has been charged under Sections 139(8) and 217 of the Income Tax Act.

3. The learned Counsel for the petitioners contended that the conditions for waiver of penalty and the conditions for waiver of interest are the same in view of the provisions of Section 273A and if the explanation given by the petitioners for waiver of penalty was sufficient and if the conditions are satisfied for waiver of interest, there could be no reason not to accept the explanation for waiver of interest. Section 273A(1), as it stood during the relevant period, reads as follows:

273A.--(1) Notwithstanding anything contained in this Act the 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 or 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 Income Tax 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), cooperated 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.

Admittedly, the petitioners had submitted the Income Tax returns voluntarily without any notice or any action being taken by the Income Tax department and had also deposited the Income Tax as per their own assessment. As noted above, the assessing officer found the assessment correct and the returns were accepted without any objection. It shows that the petitioners had, in fact, co-operated in the assessment and the enquiry which could be held before or after filing of such Income Tax returns. This indicates that they acted in good faith and they had made full and true disclosure of their income voluntarily. They had also given reasons and the circumstances in which the Income Tax returns could not be submitted within time, those reasons were accepted for the purpose of waiver of penalty. If the conditions were satisfied and if the reasons given by the petitioners were good for waiver of penalty, it is difficult to understand why they could not be good for waiver of interest, particularly when it appears that the delay was not intentional and because of the circumstances, in which they found themselves, the returns could not be submitted within time.

4. In a similar matter, in Vinodchandra C. Patel and Others Vs. Commissioner of Income Tax, , the Division Bench of the Gujarat High Court observed as follows:

There is no dispute that these are cases in which applications u/s 273A could be made. There is also no dispute as regards the conditions that the petitioners had voluntarily and in good faith made full and true disclosure of their income. The question which arises for consideration is whether the two common conditions which are applicable to all the three clauses, viz., (a), (b) and (c), can be said to have been satisfied in respect of both the claims, viz., the claim of waiver of penalty and the claim of waiver of interest. The two conditions are that : (i) the assessee should have co-operated in any enquiry relating to the assessment of his income, and (ii) the assessee should have paid or made satisfactory arrangements for payment of tax or interest payable in consequence of an order passed in respect of the relevant assessment year. Thus, the condition regarding payment was common both for the purpose of waiver of penalty and for the purpose of waiver of interest. Whereas for the purpose of payment of penalty, the Commissioner came to the conclusion that the condition for payment of tax was satisfied, with respect to the waiver of interest, he came to the conclusion that the very same condition was not satisfied. Obviously, that discloses non-application of mind because the two things are so inconsistent that they cannot stand together. Even in those cases where the Commissioner has come to the conclusion that even though the other conditions were satisfied as the defaults

were for three years or more, only 50 per cent reduction should be granted to the petitioners. With respect to these cases, it is submitted by learned Counsel for the revenue that it was within the discretion of the Commissioner to pass such an order. But the Commissioner has not stated why when all other conditions were fully satisfied, full amount of interest did not deserve to be waived. If the assessee had not committed default, no interest would have become payable. Interest became payable only because the assessee had committed the default. Therefore, while considering the question as to whether the interest deserved to be waived or not, the Commissioner should not have given much importance to the fact that for three years the returns were not filed by the concerned assessee. Thus, in all these cases, the impugned orders appear to have been passed without proper application of mind.

5. In *Sushila Indubhai Patel Vs. Union of India (UOI) and Another*, , the assessee was out of the country for a period of 9-1/2 years and, therefore, there was delay in submission of the Income Tax returns for the assessment year 1979-80 to 1988-89. In that case also the assessing officer had levied interest and also penalty. The Commissioner (Appeals) deleted the penalty, but the application for waiver of interest was rejected. This Court allowed the writ petition and held that when the penalty was waived, the Commissioner was not justified in rejecting the application for waiver of interest on the same grounds. In view of the legal provisions as interpreted by the Gujarat High Court as well as this Court, we find that if the reasons given by the petitioners for delay in filing the Income Tax returns were sufficient for waiver of penalty, the said reasons should also be sufficient for waiver of interest under Sections 217 and 139(8) of the Income Tax Act. Therefore, we hold that the Commissioner was not justified in refusing the waiver of interest.

6. In the result, the writ petitions are allowed and the impugned orders dated 30-3-1993 and 21-6-1993 in respect of Writ Petn. No. 888 of 1994 and the impugned orders dated 25-8-1993 in respect of Writ Petn. No. 887 of 1994 and Writ Petn. No. 889 of 1994 are quashed and set aside. If the amount of interest is already deposited, the petitioners shall be entitled to refund of the same without any interest thereon.