
(1986) 12 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1006 of 1986

Satish Chandra Agarwal

APPELLANT

Vs

Commissioner of Income Tax and Another

RESPONDENT

Date of Decision : 19-12-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 273A

Citation : (1987) 61 CTR 228 : (1987) 168 ITR 481

Hon'ble Judges : Virendra Kumar, J;A. Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioner, Satish Chandra Agarwal, carried on business in the name and style of " Diamond Jewellers " in Sarrafa Bazar, Meerut. He has filed this writ petition praying that the order of the Commissioner of Income Tax, Meerut, dated July 10, 1986, be quashed and the subsequent penal proceedings as well. It was further prayed that a writ of mandamus be issued commanding the respondents to drop the penalty proceedings initiated against the petitioner and not to give effect to the notice served by the Department.

2. The petitioner had failed to file a return for the assessment year 1984-85 within time. A raid was organised by the Income Tax Department into both the business as well as residential premises of the petitioner on February 8, 1985. The petitioner had thereafter on January 28, 1986, voluntarily filed his Income Tax return u/s 139(4) of the Act for the assessment year 1984-85. The petitioner also filed the Income Tax return for the year 1985-86 on January 28, 1986, within 35 days from the service of notice u/s 139(2) of the Act. The Income Tax Officer accepted the returns of the petitioner and determined the amount of tax payable for the two assessment years. But the Income Tax Officer directed the Department to issue penalty notice under Sections 271(1)(a), 271(1)(c) and 273 of the Act in respect of both these assessment years. Thereupon, notices have

been served upon the petitioner and the Income Tax Officer, Central Circle, Meerut, is proceeding in the matter. During the search, valuable ornaments, papers and account books were seized by the Department and it was found that there was unaccounted business and money to the tune of Rs. 1,11,000 which has not been explained and disclosed by the petitioner. Thereupon, the Income Tax Officer, vide his letter dated February 11, 1985, invited the petitioner's attention to the Explanation 2 to section 273A of the Act which reads as under :

"Explanations.--Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing belonging to a person are seized u/s 132 and within fifteen days of such seizure, the person makes a full and true disclosure of his income to the Commissioner, such person shall, for the purposes of Clause (b) of this sub-section, be deemed to have made, 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, a disclosure of such particulars."

3. The petitioner thereupon requested the Department to allow him to scrutinise his account books and papers so as to enable him to file a proper disclosure. He filed a disclosure petition on February 23, 1985, i.e., within 15 days before the Commissioner of Income Tax, Meerut. Subsequently, he disclosed an additional income of Rs. 30,000 on June 3, 1986, and the matter came up before the Commissioner who by the impugned order held that since the petitioner-assessee has without reasonable cause failed to furnish the return within the time allowed, he could not be permitted to furnish further particulars beyond that date. Any explanation submitted by him beyond the said period was unacceptable as the facts of the case reveal that it was not a voluntary disclosure but was made when it was found by him that the Department is possessed of all the material with it.

4. Section 273A requires the assessee to make a full and true disclosure. Whether it is a full or true disclosure is to be determined by the Income Tax Officer and the higher officers on appeal or revision. This court in exercise of its power under Article 226 of the Constitution cannot adjudicate into the question whether the disclosure is full and true. The Commissioner of Income Tax has taken a view that a full and true disclosure has not been made in this case.

5. The principal question before us was whether subsequent disclosure made by the assessee could be considered to mitigate the rigours of penalty proceedings. Explanation 2 to Section 273A makes it clear that full and true disclosure is to be made within fifteen days from the date of the search. The search was done on February 8, 1985, and the first disclosure was made on February 23, 1985, which was within time but it was not a full and true disclosure. The subsequent disclosure made on June 3, 1986, was long after the expiry of the period of fifteen days as provided in Explanation 2 as mentioned above.

6. A perusal of Explanation 2 to Section 273A of the Act does not show that there is any power with the Commissioner of Income Tax to extend the period of time

for making a full and true disclosure of the income of the assessee. The deeming clause, viz., that such disclosure will be deemed to have been made prior to the detection by the Income Tax Officer of the concealment or inaccuracy of particulars furnished in such income, would come into effect only when such disclosure is made within the time laid down in the Explanation. The time stipulated in the Explanation is fifteen days from the date of the search. There is no power vested in the Commissioner to extend that period of time. When the law provides for a specific period of time and does not give the authority, as to who is to entertain such an application for enlarging time, the time so provided has to be adhered to. Any subsequent disclosure would not partake of the disclosure stipulated under Explanation 2 nor would it in effect be the deeming clause made therein. Consequently, any disclosure made after fifteen days would not attract the benefit of the deeming clause in Explanation 2 to Section 273A of the Act. The Commissioner, therefore, had no power to extend the time prayed for by the assessee in such a case.

7. The principle laid down in the case of Commissioner of Income Tax, Andhra Pradesh Vs. M. Chandra Sekhar, would not be attracted. That was a proceeding u/s 139 and the court was considering the meaning of the expression "within the time allowed" in Sub-section (1) of Section 139 of the Act. The proviso to that sub-section empowers the Income Tax Officer to extend the date for furnishing the return. The court held that it was within the power of the Income Tax Officer to extend the time. The provision applicable in the present case is entirely different. It does not leave any scope nor any power in the Commissioner to extend the period of time as seen above. Consequently, the above case does not help the petitioner.

8. We are, therefore, Satisfied that the petitioner has made out no case for interference by this court.

9. The writ petition is accordingly rejected at the admission stage.