(1987) 04 AHC CK 0016

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 930 of 1986

Shree Kishan APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 15-04-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 132, 256, 271(1), 273A

Citation : (1987) 65 CTR 303 : (1988) 173 ITR 541 : (1987) 33 TAXMAN 91

Hon'ble Judges : K.P. Singh, J;A. Banerji, J

Bench : Division Bench

Advocate : S.C. Verma and Pankaj Mithal, for the Appellant; M. Katju, for the Respondent

Judgement

1. This writ petition has been filed by the petitioner against an order of the Commissioner, Meerut, dated July 9, 1986.

2. A petition u/s 273A of the Income Tax Act, 1961 (" the Act"), had been filed by Shree Kishan in two capacities, viz., as an individual and as a member of the Hindu undivided family. He made three prayers, viz., (i) no penalty or prosecution may be levied/launched under any provision of the Act or under any other law and any penalty imposable may be waived ; (ii) no interest under any provision of the Act may be charged or it should be waived ; and (iii) in case any assessment/reassessment in the hands of the Hindu undivided family or individual is made under the Wealth-tax Act, 1957, any penalty or interest imposable/pay-able under the Wealth-tax Act may be waived.

3. The Commissioner rejected the prayer holding that the provisions of Explanation 2 to Section 273A were not attracted in the present case and that the assessee was not entitled to the benefit thereof. The Commissioner further held that he had not made a full and true disclosure of his income within 15 days of the date of seizure as an individual. However, in regard to the case of the Hindu undivided family, the petition u/s 273A was accepted to the extent that

there would be waiver of penalty u/s 271(1)(c) of the Act. The other prayers in respect of penalties and interest were rejected. The assessee''s prayer for exemption was also rejected.

4. Learned counsel for the petitioner contended that the Commissioner has erred in law in not treating the disclosure petition of the petitioner in the true spirit and intent of Explanation 2 to Section 273A. In other words, the contention was that Explanation 2 had not been properly interpreted. Explanation 2 to Section 273A reads as follows :

" Explanation 2.--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, "

5. A perusal of Explanation 2 above makes it clear that there are two essential requirements to avail of the benefit given under Explanation 2. Firstly, there has to be a full and true disclosure of the income and, secondly, such a disclosure has to be made within 15 days of the seizure. If there is no full and true disclosure, the benefit cannot be availed of by the person whose books of account, etc., and valuables are seized. There is a time-limit also for making the disclosure. That time-limit is 15 days of the seizure. Unless there is full compliance with these two requirements, the benefit under Explanation 2 to Section 273A would not be available.

6. Whether there has been a full and true disclosure of income will be a question of fact. Similarly, whether such disclosure has been made within 15 days will also be a question of fact.

7. In the present case, there is a clear finding by the Commissioner that one disclosure was made on February 23, 1985, and the seizure was on February 8, 1985. It was thus within 15 days of the seizure. The fact that it was not a full and true disclosure is beyond the pale of dispute for the petitioner sought to make another disclosure on January 20, 1986, and sought to justify the surrender of an additional amount of Rs. 1,53,028 besides Rs. 1,50,000 already offered. He had stated therein that time being short for filing the first petition, he was now making further surrender of the aforesaid amount in continuation of the first petition.

7. The question is whether such a petition by way of continuation is permissible. Explanation 2 to Section 273A does not contemplate any power to extend the time or treat a petition made in continuation of the first petition as within time.

8. It is well-settled that fiscal statutes are to be construed strictly. If there is no

provision for extension of time or for treating a Subsequent petition made after the expiry of 15 days as a continuation of the first petition, then we are afraid there is no power in the Commissioner to extend the time or to treat such a petition as within time.

9. Apart from the above, the finding of the Commissioner is that the assessee had not made a full and true disclosure. What he had filed on February 23, 1985, was only part of the total disclosure made, vide the second petition dated January 20, 1986. The Commissioner has also recorded that the second petition made by the assessee in his individual capacity surrendering an additional amount of Rs. 1,53,028 was not out of the assessee''s volition or before detection by the Income Tax Officer. The Commissioner observed that the circumstances showed that it was under compulsive circumstances that the assessee had to make the additional offer for assessment in his individual capacity.

10. In view of the above, we do not find any manifest error of law in the impugned order. The writ petition must fail and is accordingly dismissed.