

(1991) 09 MAD CK 0080
In the Madras High Court
Case No : Writ Petition No. 10345 of 1983

S.M. Ziaddin

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 24-09-1991

Acts Referred:

Income Tax Act, 1961 — Section 139(8), 140A, 271(1), 273, 273A

Citation : (1993) 203 ITR 136

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : V. Parthiban for N. Thiagarajan and Vijayaraghavan, for the Appellant; N.V. Balasubramaniam, for the Respondent

Judgement

Raju, J.—The above writ petition has been filed for a writ of certiorarified mandamus to call for and quash the proceedings of the respondent in C. No. 1431 (27) /1980-81 dt. 1st Aug., 1983, insofar as it refuses to grant waiver of interest and penalty under ss. 139(8), 217 and 273(b) in respect of the asst. yrs. 1972-73, 1973-74 and 1974-75 and consequently direct the respondent to reconsider the applications dt. 3rd May, 1980, and 26th June, 1983.

2. It is unnecessary for me to go into the details having regard to the limited controversy before me. The fact remains that the petitioner, on 26th Nov., 1979, taking advantage of s. 273A of the IT Act, 1961, and disclosing the income for the asst. yrs. 1971-72 to 1977-78, paid the tax as calculated by him for the six assessment years to which a reference will be made hereinafter separately. After remitting the tax, the petitioner, on 4th Dec., 1979, filed returns of income for the six assessment years and the ITO, Salem-7, on 10th April, 1980, passed the assessment orders relating to the said six years. The assessment year, the income returned and accepted, the tax paid and the tax actually assessed are as follows :

Asst. yr.	Income returned	Tax paid	Tax assessed and accepted
s. 140A			
Rs. Rs. Rs.	1971-72	28,820	6,707
	1972-73	29,000	6,279
	1973-74	6,081	6,440

20,980 3,089 3,213 1974-75 13,960 1,216 1,290 1975-76 8,970 392 392
1977-78 13,200 858 858 18,541 18,274

3. While making the order of assessment, the authority also imposed interest under ss. 139(8) and 217 of the IT Act, 1961, and subsequently, by order dt. 26th March, 1983, penalties under s. 271(1)(a) and s. 273(b) were also levied. The position relating to the levy of interest and penalty under the provisions referred to above in respect of the years in question is as hereunder :

Asst. yr.	Interest under s. 139(8)	Interest under s. 217	Interest under s. 271(1)(a)	Interest under s. 273(b)	Penalty under Rs.	Penalty under Rs.	Penalty under Rs.	Penalty under Rs.
1971-72	5,919	6,034	3,041	435				
1972-73	5,644	5,869	3,220	483	1973-74	2,434	2,536	1,607
1974-75	773	812	645	97	1975-76	156	nil	196
1977-78	224	248	480	nil	15,150	15,499	9,189	1,306

4. While so, immediately after the receipt of the assessment orders, the petitioner appears to have given a petition to the respondent pointing out that he was entitled to the benefit of s. 273A and prayed for waiver of the interest as well as the penalty imposable under the provisions referred to above. The respondent, by the impugned proceedings dt. 1st Aug., 1982, allowed waiver as hereunder :

Asst. yr.	Interest charged under s. 139(8)	Interest charged under s. 217	Interest charged under s. 271(1)(a)	Interest charged under s. 273(b)	Penalty levied/leviable under Rs.	Penalty levied/leviable under Rs.	Penalty levied/leviable under Rs.	Penalty levied/leviable under Rs.
1971-72	5,919	6,034	3,041	456	1972-73	-	-	-
1973-74	-	-	-	-	1,607	-	-	-
1974-75	-	-	-	-	645	-	-	-
1975-76	156	-	-	-	196	-	-	-
1977-78	224	248	480	-				

5. The respondent has also stated in the impugned proceedings that interest levied under ss. 139(8) and 217 and penalties levied under s. 273(b) for the asst. yrs. 1972-73 to 1974-75 are not waived as there has been no compliance with s. 273A(1)(iii)(c). Aggrieved, the above writ petition has been filed.

6. Learned counsel appearing for the petitioner vehemently contended, while reiterating the submissions made in the affidavit that, on an overall consideration of the tax liability in respect of the six assessment years as found due and the tax paid would show that the tax paid under s. 140A was even in excess of the tax assessed to be due and that inasmuch as the petitioner has bona fide volunteered to disclose the income and paid the tax due thereon on the very date of disclosure of the income to the Department, the penalty and interest ought to have been waived in their entirety, considering the bona fides of the petitioner and that the impugned order in so far as it denies the claim for waiver cannot be sustained in law. Learned counsel contended that there has been no proper application of mind and that the conclusion arrived at to decline waiver in respect of certain periods cannot be justified. Mr. N. V. Balasubramaniam, learned counsel appearing for the respondent, while referring to the provisions contained in s. 273A(1)(iii)(c) of the Act contended that the waiver of penalty and interest for the years under challenge could not be granted on account of the fact that the petitioner failed to comply with the necessary condition, viz., the

payment of the tax on the income disclosed. According to learned counsel, it is not the totality of the tax for various years that has to be taken into account but the liability in respect of each year and the payment that has to be considered and taken note of to see whether there has been proper and sufficient compliance with s. 273A(1)(iii)(c) of the Act. Learned counsel also relied upon a decision of the Division Bench of the Allahabad High Court in *Millan Bone Mills Vs. Commissioner of Income Tax and Another*, wherein the Division Bench held that the conditions precedent for the exercise of the discretion for waiver or reduction of the penalty or charging of interest are those mentioned in cls. (a), (b) and (c) referred to above and that inasmuch as the condition precedent to invoke the benefit of cl. (c) of sub-s. (1) of s. 273A has not been complied with, the CIT could not properly and validly exercise his discretion in favour of the petitioner even for the assessment years for which it has been disallowed. Learned counsel also contended that the reason for not granting the waiver for the years in question is found disclosed in paragraph 3 of the impugned order and that no exception could be taken to the reasoning by the respondent.

7. I have carefully considered the submissions of learned counsel appearing on either side. I am unable to accept and sustain the objections on behalf of the petitioner to the order in question. Income Tax is an annual levy. Each "previous year" is a distinct unit of time for the purpose of assessment and the profits made or the liabilities or losses incurred before or after the relevant previous year are immaterial in assessing the liabilities in a particular previous year. So far as the facts of this case are concerned, it is not in controversy that, for certain assessment years, the tax due on the admitted income has not been remitted though in respect of one year there had been an excess remittance of tax on the admitted income. The petitioner would contend that it was merely an error of calculation and that, having regard to the fact that the remittance was on the same day, with reference to all the assessment years, the overall discharge of liability and remittance should be taken into account. Learned counsel for the respondent would contend that the petitioner himself apportioned the tax also with reference to the admitted income and he alone paid the tax as calculated by him for the six years separately and that merely because it was done on a single day in respect of all the assessment years simultaneously, the provisions of s. 273A(1)(iii)(c) of the Act cannot be said to have been duly complied with.

8. Having regard to the principle of law, that the compliance with the conditions referred to supra, viz., the disclosure coupled with the payment of the tax admittedly due on the admitted income is a condition precedent for entitling an assessee for consideration of his claim for waiver of the penalty as well as the interest chargeable, unless the said condition is satisfied in the present case, this Court cannot interfere with the exercise of the discretion by the respondent, nor could this Court find fault with such exercise of discretion by the respondent on any grounds of mercy. The fact that, in respect of certain years, the admitted tax due on the income returned has not been paid cannot be disputed. Whether the mistake in calculation pleaded or claimed by the petitioner to exonerate him from

meticulous compliance with the conditions prescribed under the statute to render him eligible to the benefit of a privilege of waiver is the question which really falls for consideration. In my view, a statutory prescription in the nature of a condition precedent cannot be mutilated by taking into account the mistake pleaded or bona fides alleged. Once it is held to be a condition precedent, there is no question of compromising with the compliance with the requirements of the said provision before any one can claim to be entitled to the privilege of waiver. Consequently, on the fact situation before me and having regard to the scope and nature of the stipulation contained in s. 273A(1)(iii)(c) of the Act, I am unable to countenance the plea on behalf of the petitioner that the respondent committed any error in the matter of exercise of his discretion. This writ petition, therefore, fails and shall stand dismissed. No costs.